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Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

NO. _____

EXOTIC COINS, INC., a Colorado Corporation, d/b/a WESTMINSTER COIN & JEWELRY, LTD.; JEFF ANDERSON d/b/a WESTMINSTER GOLD AND SILVER EXCHANGE; JOHN BIELASKI, d/b/a GOLD DUST COIN CENTER,

Appellants,

vs.

PAUL Q. BEACOM in his official capacity as District Attorney for the County of Adams; BERT JOHNSON in his official capacity as Sheriff for the County of Adams; THE CITY OF FEDERAL HEIGHTS, an Incorporated Municipality; LESTER M. BAUER in his official capacity as Mayor for the City of Federal Heights; DOUG FARRIS in his official capacity as Chief of Police for the City of Federal Heights; THE CITY OF WESTMINSTER, an Incorporated Municipality; VI JUNE in her official capacity as Mayor for the City of Westminster; KENNETH HUCK in his official capacity as Chief of Police for the City of Westminster; J. D. MacFARLANE in his official capacity as Attorney General for the State of Colorado,

Appellees.

JAY DAVID MELTZER,

Appellant,

vs.

STATE OF COLORADO,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF COLORADO

**JURISDICTIONAL STATEMENT**

ARTHUR M. SCHWARTZ, P.C.
1650 Market Street
Denver, Colorado 80202
(303) 893-2500

Attorney for Appellants

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## QUESTIONS PRESENTED FOR REVIEW

I. Whether the Purchasers of Valuable Articles Act,Sections 18-16-101 to 110, 8 Colorado Revised Statutes (1984 Supp.) is violative of the Commerce Clause of the United States Constitution, Art. I,Section 8, Cl.3?

II. Whether the Purchasers of Valuable Articles Act, Sections 18-16-101 to 110, 8 C.R.S. (1984 Supp.) enacted by the State of Colorado, is preempted by Federal law and, thus, invalid under the Supremacy Clause of the United States Constitution, Art. VI, Cl. 2?

III. Whether the Purchasers of Valuable Articles Act is unconstitutional on its face for authorizing unreasonable searches of private businesses in violation of the Fourth and Fourteenth Amendments to the United States Constitution?

IV. Whether the Purchasers of Valuable Articles Act is unconstitutionally vague in violation of the guarantee of due process of law contained in the Fifth and Fourteenth Amendments to the United States Constitution?

## TABLE OF CONTENTS


Page

TABLE OF AUTHORITY ..... iii

OPINIONS BELOW ..... 2

JURISDICTION ..... 2

QUESTIONS PRESENTED ..... 3

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED ..... 3

STATEMENT OF THE CASE ..... 5

THE FEDERAL QUESTIONS ARE SUBSTANTIAL ... 7

I. THE COLORADO PURCHASERS OF VALUABLE ARTICLES ACT, SECTIONS 18-10-101 TO 110, 8 COLORADO REVISED STATUTES (1984 SUPP.) VIOLATES THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION ..... 7

A. The Valuable Articles Act Interferes With An Area Requiring Uniform National Regulation ..... 9

B. The Colorado Valuable Articles Act Violates The Commerce Clause Of The United States Constitution Because It Directly Burdens Or Disrupts The Flow Of Interstate Commerce .. 16

II. THE COLORADO ACT IS PREEMPTED BY FEDERAL LEGISLATION ..... 17

III. THE ACT IS VIOLATIVE OF APPELLANTS' FOURTH AMENDMENT RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES ..... 21

IV. THE ACT IS UNCONSTITUTIONALLY VAGUE IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FEDERAL CONSTITUTION ..... 27

A. Introduction ..... 27

B. The Definitions Of "Valuable Article" and "Precious Or Semiprecious Metals or Stones" Within The Act Are Impermissibly Vague ..... 29

C. The Definition Of "Purchaser" Within The Act Is Impermissibly Vague ..... 30

CONCLUSION ..... 31

**APPENDIX A**

Opinion of the Supreme Court of Colorado ..... A-1

Order Denying Petition for Rehearing—*Exotic Coins, et al., v. Beacom* ..... A-48

Order Denying Petition for Rehearing—*People v. Meltzer* ..... A-50

Trial Court—Order—*People v. Meltzer* ..... A-51

Trial Court—Order Denying Preliminary Injunction *Exotic Coins, et al. v. Beacom* ..... A-56

Trial Court—Order Denying Permanent Injunction *Exotic Coins, et al. v. Beacom* ..... A-64

Notice of Appeal—*Meltzer v. People* ..... A-68

Notice of Appeal—*Exotic Coins, et al. v. Beacom,* .... A-70

**APPENDIX B**

Purchasers of Valuable Articles Act ..... B-1

## TABLE OF CASES

Page

Alamedia-Sanchez v. United States,
413 U.S. 266, 37 L.Ed.2d 596, 93 S.Ct. 25 (1973) .... 24

Allen v. Craig,
1 Kan.App. 2d 301, 564 P.2d 552 (1977) ..... 19

California v. Zook,
336 U.S. 725, 69 S.Ct. 841, 93 L.Ed. 1005 (1949) .... 8

Camara v. Municipal Court,
387 U.S. 523 (1967) ..... 22, 23, 24

Colonnade Catering Corp. v. United States,
397 U.S. 73 (1970) ..... 23, 24, 25, 26

Connolly v. General Construction Company,
269 U.S. 385 (1926) ..... 27, 28

Cooley v. Board of Wardens of the Port of Philadelphia,
53 U.S. (12 How.) 996, 13 L.Ed. 996 (1851) ..... 7, 8

Craig v. Missouri,
4 Pet. 410, 7 L.Ed. 903 (1830) ..... 10

Dean Milk Co. v. City of Madison, Wisconsin,
340 U.S. 349, 71 S.Ct. 295, 95 L.Ed. 329 (1951) ..... 8

Feldman v. Great Northern Railway Co.,
428 F.Supp. 979 (S.C.N.Y. 1977) ..... 11, 12

Grayned v. City of Rockford,
408 U.S. 104 (1972) ..... 28

Joe Flynn Rare Coins, Inc. v. Stephan,
526 F.Supp. 1275 (D. Kan. 1981) ..... 27

Julliard v. Greenman,
110 U.S. 421 (1884) ..... 10

Knox v. Lee,
12 Wall. 457, 20 L.Ed. 287 (1869) ..... 10

Laycock v. Kenney,
270 F.2d 580 (9th Cir. 1959) *cert. denied,* 361 U.S. 933 (1960) ..... 9, 10, 11

Marshall v. Barlow's, Inc.,
436 U.S. 307 (1978) ..... 24, 25, 26

Mid-Fla Coin Exchange, Inc. v. Griffin,
529 F.Supp. 1006 (M.D. Fla. 1981) ..... 12, 13, 15 16, 17, 26, 27

Norman v. Baltimore & Ohio Railroad Co.,
294 U.S. 240, 55 S.Ct. 407, 79 L.Ed. 885 (1935) ... 9, 10

Papachristou v. City of Jacksonville,
405 U.S. 156 (1972) ..... 28

Prudential Insurance Co. v. Benjamin,
328 U.S. 408, 66 S.Ct. 1142, 90 L.Ed. 1342 (1946) ... 8

Radice v. Zaraty,
293 Ala. 585, 308 So.2d 242 (1975) ..... 19

Screws v. United States,
325 U.S. 91 (1945) ..... 29

See v. City of Seattle,
387 U.S. 541 (1967) ..... 23

Silkwood v. Kerr-McGee Corporation,
____ U.S. ____, 78 L.Ed. 2d 443 (1984) ..... 17, 18

Simpson v. Shepard,
230 U.S. 352, 33 S.Ct. 729, 57 L.Ed. 1511 (1913) .... 8

Smith v. Goguen,
415 U.S. 566 (1974) ..... 28

Southern Pacific Co. v. Arizona,
325 U.S. 761, 65 S.Ct. 307, 87 L.Ed.2d 315 (1943) .. 8, 9

Sturges v. Crowninshield,
4 Wheat 122, 4 L.Ed. 529 (1819) ..... 10

Torres v. Commonwealth of Puerto Rico,
442 U.S. 465, 99 S.Ct. 2425, 61 L.Ed.2d 1 (1979) .... 26

United States v. Biswell,
406 U.S. 311 (1972) ..... 23, 24, 25, 26

United States v. Harriss,
374 U.S. 612, 74 S.Ct. 808 (1954) ..... 28

Veazie Bank v. Fenno,
8 Wall 533, 19 L.Ed. 482 (1869) ..... 10

Woodruff v. Mississippi,
162 U.S. 291 (1896) ..... 19

Woodruff v. Trapnall,
10 How. 190, 13 L.Ed. 383 (1815) ..... 10

*Statutes and Rules*

*United States*

U.S. Const., Amend. IV ..... 4, 21, 22, 27
U.S. Const., Amend. V ..... 4
U.S. Const., Amend. XIV ..... 4
U.S. Const., Art. I, Section 8 ..... 3, 4, 9
U.S. Const., Art. VI, ..... 4

7 U.S.C., Section 23 ..... 19
12 U.S.C.S. 95a ..... 20
15 U.S.C.S., Sections 291-300 ..... 20
28 U.S.C. Section 1257(2) ..... 3
31 U.S.C., Section 440 ..... 10

31 U.S.C.S., Section 441 ..... 18
31 U.S.C.S., Section 442 ..... 10, 18
33 U.S.C., Section 443 ..... 11
41 U.S.C.S., Section 392 ..... 19
41 U.S.C.S., Section 457 ..... 19

*Colorado*

Sections 18-16-101 to 110,8 C.R.S.
(1984 Supp.) ..... 2, 3, 5, 6, 7, 14, 15
16, 17, 20, 21, 22, 29, 30

*Other Authority*

L. Tribe, American Constitutional Law, Section 6-4
(1978) ..... 7

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Appellants,

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Appellees.

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STATE OF COLORADO,

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ON APPEAL FROM THE SUPREME COURT OF COLORADO

## JURISDICTIONAL STATEMENT

The Appellants, Exotic Coins, Inc., Jeff Anderson, John Bielaski, and Jay David Meltzer appeal from the final

judgment of the Supreme Court of Colorado dated April 22, 1985 upholding the constitutionality of the Purchasers of Valuable Articles Act, Sections 18-16-101 to 110, 8 Colorado Revised Statutes (1984 Supp). Exotic Coins, Ltd. d/b/a Westminster Coin & Jewelry, Ltd. is a closely held Colorado corporation with no parent companies, affiliates or subsidiaries.

## OPINIONS BELOW

The opinion of the Supreme Court of Colorado, which appears in the appendix hereto, p. A1, *infra,* is reported at 699 P.2d 930 (Colo. 1985).

The judgment and order of the Jefferson County District Court in *People v. Meltzer,* dated July 1, 1982 is not reported. It is reprinted in Appendix A, at p. A-51, attached hereto. Neither the order of the Adams County District Court denying the motion for preliminary injunction, dated November 4, 1981, nor the order of that court denying the permanent injunction dated July 27, 1984, are reported. Both are reprinted in Appendix A at p. A-56 and p. A-64, respectively.

## JURISDICTION

The judgment of the Supreme Court of Colorado, upholding the constitutionality of the Valuable Articles Act, was entered on April 22, 1985. Timely filed Petitions for Rehearing were filed in both cases and were denied on May 28, 1985. See pp. A-48; 50, *infra.*

A Notice of Appeal to this Court was filed in both cases in the Supreme Court of Colorado on August 9, 1985. See pp. A-68; 70, *infra.*

This appeal is being docketed in this Court within 90 days from the denial of rehearing below. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(2).

## QUESTIONS PRESENTED

I. Whether the Purchasers of Valuable Articles Act,Sections 18-16-101 to 110, 8 Colorado Revised Statutes (1984 Supp.) is violative of the Commerce Clause of the United States Constitution, Art. I,Section 8, Cl.3?

II. Whether the Purchasers of Valuable Articles Act, Sections 18-16-101 to 110, 8 C.R.S. (1984 Supp.) enacted by the State of Colorado, is preempted by Federal law and, thus, invalid under the Supremacy Clause of the United States Constitution, Art. VI, Cl. 2?

III. Whether the Purchasers of Valuable Articles Act is unconstitutional on its face for authorizing unreasonable searches of private businesses in violation of the Fourth and Fourteenth Amendments to the United States Constitution?

IV. Whether the Purchasers of Valuable Articles Act is unconstitutionally vague in violation of the guarantee of due process of law contained in the Fifth and Fourteenth Amendments to the United States Constitution?

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Article I, Section 8, Clause 1:

> The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the Common Defense and general Welfare of the United States; but all

> Duties, Imposts and Excises shall be uniform throughout the United States.

United States Constitution, Article I, Section 8, Clause 3:

> To regulate commerce with foreign nations, and among several States, and with Indian tribes.

United States Constitution, Article VI, Clause 2:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

United States Constitution, Fourth Amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Fifth Amendment:

> [N]or shall any person be deprived of life, liberty, or property without due process of law.

United States Constitution, Fourteenth Amendment:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Colorado Purchasers of Valuable Articles Act, 8 Colorado Revised Statutes, Sections 18-10-101 to 110 (1984 Supp.) is set forth verbatim at Appendix B to this Statement.

## STATEMENT OF THE CASE

In its 1981 term, in an effort to reduce the occurrence of burglaries in the state, the Colorado legislature passed a statute known as the Colorado "Purchasers of Valuable Articles" Act (the "Act"), which Act is codified as 8 Colorado Revised Statutes, Sections 18-16-101 to 110 (1984 Supp.).

The Act requires, *inter alia,* that persons engaged in the business of buying valuable articles, consisting of precious or semiprecious metals or stones, obtain adequate identification before a sale, Section 18-16-103, secure a written declaration of the seller's ownership, Section 18-16-105(1), keep a register recording detailed information about each purchase, Section 18-16-105, make the register available to any peace officer for warrantless inspection at any reasonable time, Section 18-16-105(3), hold certain types of "valuable articles" in unaltered form for thirty days from the date of purchase, Section 18-16-106(1), and permit warrantless inspection of the articles by law enforcement officers during the holding period, *id.* Every purchaser must also provide weekly reports to the local law enforcement agency reflecting specified information about each purchase. Section 18-16-107. Persons engaged in the business of buying valuable articles may not purchase such an item from any person under the age of eighteen years. Section 18-16-104. Violation of the Act is a class 5 felony. Section 18-16-108.

The plaintiffs in *Exotic Coins, Inc. v Beacom* are owners and operators of businesses in Adams County that buy and sell coins having numismatic value, and other articles containing gold, silver and other precious or semiprecious metals or stones. They sought declaratory and injunctive relief to obtain a declaration that the Act is unconstitutional and to restrain the defendant officials from enforcing the Act. The trial court issued a temporary restraining order but, after a later hearing, dissolved that order and denied a preliminary injunction. On July 27, 1982 after trial, the court ruled that the plaintiffs had failed to establish that the Act is unconstitutional, and denied a permanent injunction. The plaintiffs appealed to the Colorado Supreme Court.

In *Meltzer v. Colorado,* appellant, Jay David Meltzer, was charged with three felony counts concerning violations of the Act. Meltzer is a merchant who deals in coins at his store. The criminal information alleged that Meltzer purchased gold and silver coins without first securing adequate identification from the seller contrary to the requirements of Section 18-16-103, purchased such coins from a person under the age of eighteen in violation of Section 18-16-104, and failed to keep a register and record of the purchase of such coins as required by Section 18-16-105. The appellant moved to dismiss the charges, asserting that the Act is unconstitutional in several respects. The trial court granted the motion, concluding that the provisions of the Act upon which the charges were based had been preempted by the Congress of the United States. The court also held that the charge based on the register and record requirements of Section 18-16-105 was invalid.

The Colorado Supreme Court, on April 22, 1985, upheld the constitutionality of the Act. In so doing, the Court

reversed the order of the district court that dismissed Meltzer's criminal charges under the Act. In addition, the Supreme Court affirmed the district court's order denying the coin dealer's request for permanent injunction in the Exotic Coins case. The Colorado Supreme Court denied Appellants' Petitions for Rehearing on May 22, 1985. From these orders, Appellants request this Court to accept jurisdiction.

## THE FEDERAL QUESTIONS ARE SUBSTANTIAL

### I.
### THE COLORADO PURCHASERS OF VALUABLE ARTICLES ACT, SECTIONS 18-10-101 TO 110, 8 COLORADO REVISED STATUTES (1984 SUPP.) VIOLATES THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION

Under the Commerce Clause of the Federal Constitution, states are prohibited from passing legislation that interferes in an area requiring uniform national regulation or that directly burdens or disrupts the flow of national commerce. Any state act passed in violation of this doctrine is void.

This Court, beginning in *Cooley v. Board of Wardens of the Port of Philadelphia,* 53 U.S. (12 How.) 996, 13 L.Ed. 996 (1851), has consistently held that states can regulate those aspects of interstate commerce so local in character that require diverse treatment, while only Congress can regulate those aspects of interstate commerce so national in character as to demand uniform treatment. *L. Tribe, American Constitutional Law,* Section 6-4 (1978). The focus is upon the subject matter of the challenged state regulation. If the regulated activity is of predominantly local interest, the state action will be sustained. If the activity implicates

interests of a national scope, the state action must fail. *California v. Zook,* 336 U.S. 725, 728, 69 S.Ct. 841, 93 L.Ed. 1005 (1949). The *Cooley* doctrine has generally been limited, however, to situations in which Congress has failed to indicate, through the enactment of federal legislation, that the subject area is not one demanding uniform treatment on a national level.

Thus, Congress has the power to redefine the dimensions of local and national interests as they relate to interstate commerce. *California v. Zook, supra,* 336 U.S. at 728; *Prudential Insurance Co. v. Benjamin,* 328 U.S. 408, 66 S.Ct. 1142, 90 L.Ed. 1342 (1946). Congress can, through legislation, decide for itself that an area is a proper one for the exercise of exclusive federal jurisdiction. *See Simpson v. Shepard,* 230 U.S. 352, 399, 33 S.Ct. 729, 57 L.Ed. 1511 (1913). Where Congress had chosen to exercise its paramount power over commerce, state regulation that would otherwise be valid must fail. *Dean Milk Co. v. City of Madison, Wisconsin,* 340 U.S. 349, 353, 71 S.Ct. 295, 95 L.Ed. 329 (1951); *Southern Pacific Co. v. Arizona,* 325 U.S. 761, 709, 65 S.Ct. 307, 87 L.Ed.2d 315 (1943).

In addition, if a state statute or regulation operates to directly burden, or disrupt the flow of, interstate commerce, it must fail even in the absence of competing federal legislation. *See e.g. Southern Pacific Co. v. Arizona, supra,* 325 U.S. at 767-69 (and the cases cited therein); *Simpson v. Shepard, supra,* 230 U.S. at 396. The *Cooley* doctrine holds merely that, in the absence of federal legislation, a state enactment aimed at regulating matters of local concern is not invalid simply because it has an incidental impact upon the operation of the national economy. The doctrine does not, however, accord free rein to the states to regulate all matters of local interest, regardless of the effect of the

regulation upon interstate commerce, for it has been accepted constitutional doctrine for a hundred years that "the commerce clause, without the aid of Congressional legislation....affords some protection from state legislation inimical to the national commerce...." *Southern Pacific Co. v. Arizona, supra,* 325 U.S. at 369. If the state legislation operates to significantly obstruct the free flow of commerce among the several states it must fail.

In the instant case, the challenged statute is invalid under either strand of the Commerce Clause analysis discussed above, i.e., either on the basis that it interferes in an area requiring uniform national regulation or on the basis that it directly burdens or disrupts the flow of interstate commerce.

## A.
## THE VALUABLE ARTICLES ACT INTERFERES WITH AN AREA REQUIRING UNIFORM NATIONAL REGULATION

The regulation of gold in this country is a power that has been exercised exclusively by either Congress or the Executive, or both. Congressional power of regulation of gold has been held to be virtually absolute, extending to every facet of gold acquisition, ownership and transfer. *See,* United States Constitution, Art. I, Section 8; *Norman v. Baltimore & Ohio Railroad Co.,* 294 U.S. 240, 55 S.Ct. 407, 79 L.Ed. 885 (1935); *Laycock v. Kenney,* 270 F.2d 580 (9th Cir. 1959) *cert. denied,* 361 U.S. 933 (1960). The power derives from several constitutional sources: the power to coin and regulate the value of money, the power to lay and collect taxes, the power to borrow, the power to fix the standards of weights and measures, the power to regulate commerce among the several states, and the power to make all laws which are necessary and proper for carrying into

execution these enumerated power. *Norman v. Baltimore & Ohio Railroad Co., supra,* 294 U.S. at 303; *Laycock v. Kenney, supra,* at 590.

As far back as 1869, this Court held that powers concerning the regulation of money and coin are among those expressly granted to the federal government, and that "[t]he states can no longer declare what shall be money or regulate its value. Whatever power there is over the currency is vested in Congress." *Legal Tender Cases, (Knox v. Lee),* 12 Wall. 457, 545, 20 L.Ed. 287 (1869). The Court has further stated, "It cannot be doubted that under the Constitution the power to provide a circulation of coin is given to Congress." *Veazie Bank v. Fenno,* 8 Wall 533, 19 L.Ed. 482 (1869). *See also Juilliard v. Greenman,* 110 U.S. 421 (1884).

The extent of the state's power as to currency, on the other hand, is limited to the establishment of banks, the regulation of foreign notes, and the collection of public dues. *Woodruff v. Trapnall,* 10 How. 190, 13 L.Ed. 383 (1815). Thus, states have no power to regulate currency or legislate what may or may not be accepted as legal tender for payment of any debt. *See Norman v. Baltimore & O.R. Co.,,* 294 U.S. 240 (1935); *Legal Tender Case, supra; Craig v. Missouri,* 4 Pet. 410, 7 L.Ed. 903 (1830); *Sturges v. Crowninshield,* 4 Wheat 122, 4 L.Ed. 529 (1819).

Following several piecemeal steps on the part of the President and Congress designated to restrict the use and transfer of gold among private citizens, Congress enacted the Gold Reserve Act of 1934, 31 U.S.C. Section 440 *et seq.* Section 2 of the Gold Reserve Act, 31 U.S.C. Section 442, delegated to the Secretary of the Treasury the authority to prescribe, by regulation, the conditions under which gold could be acquired, held, transported, exported or earmarked for private use. Acquisition and use of gold by

private citizens was restricted to industrial, professional and artistic purposes. Purchasing, holding, selling or otherwise dealing in gold for investment or speculative purposes was specifically forbidden by the regulations promulgated under the Act. 31 C.F.R. Sections 54.14(b), 54.15 (1974); *see Feldman v. Great Northern Railway Co.*, 428 F.Supp. 979, 983 (S.D.N.Y. 1977).

Section 4 of the Gold Reserve Act, 31 U.S.C. Section 443, provided for the forfeiture of any gold acquired or used in violation of the Act. The legislative history of the statute indicated that Congress intended to place "complete control over this metal" in the hands of the United States Government. "In order to protect the Government's power over gold, the bill gives it the right to regulate the acquisition, transportation, etc. of the metal. . . ." H.R. Rep. No. 292, 73 Cong., 2d Sess. ____ (1934).

In *Laycock v. Kenney, supra,* the Ninth Circuit Court of Appeals upheld the constitutionality of the Gold Reserve Act in the face of a challenge that, *inter alia,* the legislation was beyond the power of Congress to enact. In so doing, the Court endorsed the broad powers of Congress over the nation's monetary system, concluding that such power extended to "gold in any form," and not merely to "monetary gold." 270 F.2d at 591-92.

In September 1973, Congress passed legislation repealing Sections 3 and 4 of the Gold Reserve Act. Act of September 21, 1973, Pub. L. 93-110, 87 Stat. 352, Tit. I (hereinafter "Public Law 93-110"). Public Law 93-110, as amended by Act of August 14, 1974, Pub. L. 93-373, 88 Stat. 445 (hereinafter "Public Law 93-373"), eliminated all prohibitions upon private ownership of gold, providing in pertinent part:

> (b) No provision of any law in effect on the date of enactment of this Act, and no rule, regulation or order in effect on the date subsections (a) and (b) become effective may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold in the United States or abroad.

Section 3(c) of Public Law 93-110 provided that the lifting of prohibitions relating to private ownership of gold would become effective upon the order of the President. Section 2(c) of Public Law 93-373 amended Section 3(c) of Public Law 93-110 to provide that the restrictions would automatically be lifted on December 31, 1974 if the President failed to act by then. Since the President did not act by that date, the elimination of the regulations pertaining to private ownership of gold became effective automatically. *See Feldman v. Great Northern Railway Co.,supra.*

Based upon this legislative history, a federal district court in *Mid-Fla Coin Exchange, Inc. v. Griffin,* 529 F.Supp. 1006 (M.D. Fla. 1981) enjoined enforcement of a statute almost identical to that challenged here. The Florida statute imposed the following restrictions on gold and silver dealers: (1) dealers were required to keep detailed records of each purchase, including a photograph or fingerprint of the seller: (2) these records were required to be preserved for three years and subject to inspection by all law enforcement officers; (3) purchasers were required to retain purchased goods in unaltered condition for 15 days after purchase; (4) no items of precious metal could be purchased from a person under 18. A violation of the Florida statute constituted a first degree misdemeanor.

After an examination of Federal legislation in the area of gold and silver, the court stated:

> It is apparent from the above discussion that *the regulation of activities pertaining to the buying, selling and holding of gold by private citizens has always been a matter of national, rather than local concern. The need for uniform regulation of matters* relating to gold makes it one of those areas 'of such a nature as to demand that, if regulated at all, ....[its] regulation should be prescribed by a single authority.' ... .In fact, the Court would be hard pressed to single out any other commodity having a greater impact upon not simply the national economy, but upon the economy of the entire world. Surely, the regulation of private dealings in gold is not an area demanding diverse treatment in accordance with the special requirements of local conditions. 529 F.Supp. at 1017. (Citations omitted and emphasis added).

Accordingly, the court found the Florida statute to be violative of the Commerce Clause:

> Although [the Florida statutes] do not expressly prohibit dealing in gold, they impose such burdensome restrictions upon the secondhand precious metal market as to make it impossible, or at least impractical, for dealers to carry on their business. These restrictions, particularly the 15-day holding requirement, interfere with the broad national authority over the subjects of revenue, finance, and currency to an impermissible extent... Specifically, the Florida statutes contravene the national policy reflected in Public Law 93-110 that private persons be free to buy, sell or otherwise deal in gold without restriction. As such, the challenged legislation is violative of the Commerce Clause of the United States. 529 F.Supp. at 1017-18.

Precisely the same reasoning applies to the challenged Colorado statute. The various restrictions of the Act focus upon transactions involving "valuable articles," which are defined as:

> Any tangible personal property consisting in whole or in part, of precious or semiprecious metals or stones, whether solid, plated or overlaid, including but not limited to, household goods, jewelry, United States commemorative medals or tokens, and *gold and silver bullion*. Section 102(7)(a). p. B-2 (Emphasis added).

Section 102(3) includes gold and silver within the definition of "precious or semi-precious metals." Thus gold and silver coinage and bullion are regulated by the challenged Act. Other provisions of the Act further demonstrate that it was intended to cover coins. For example, the Act specifically exempts "gold coins" from the substantive requirement of Section 106 of the Act that "valuable articles" be held for thirty days. Clearly, if a gold coin were not intended to fall within the definition of "valuable articles," there would be no reason to specifically exempt it from the holding requirement.

As such, the Act imposes tremendous burdens on the trade of gold and silver coins and bullion. For example, the Act requires that purchasers extensively document, in a permanent well bound book, any "purchase" of a "valuable article." Thus, if a purchaser does not have the required "permanent well bound book," he is prohibited from "purchasing" any coins, bullion or other "valuable articles."

Moreover, purchasers are absolutely prohibited by the Act from "purchasing" a valuable article from either 1) a person not having or refusing to display one of the specified types of identification, or 2) a person under the age of 18. Section 103. The definition of "purchase" within Section 102 of the Act includes "taking valuable articles in full or part satisfaction of a debt." Thus, a minor or a person without

identification is forbidden by the Act to use his United States currency to pay a debt he owes to a "purchaser."

The Act also requires that all "valuable articles," except stamped and assayed gold and silver bullion and gold coins, be held for thirty days after purchase. Section 106. Accordingly, any time a purchaser "purchases" or accepts in payment of a debt either silver coins or bullion which is not stamped and assayed, he is prohibited by the Act from spending or selling such items for at least thirty days. A violation of this prohibition constitutes a felony.

In imposing these restrictions, the Act is strikingly similar to the Florida statute struck down in *Mid-Fla, supra*. Both mandate the holding of purchased items for at least two weeks (the Florida requirement was 15 days; the Colorado requirement is 30 days). Both require detailed record keeping, require records to be made available to any law enforcement official, and prohibit purchases from persons under 18.

Accordingly, the analysis set forth in *Mid-Fla* is squarely on point and convincingly sets forth the reasons why the Colorado Act is invalid. Like the Florida Act, by imposing requirements on transactions involving gold and silver, the Colorado Act constitutes an unlawful attempt to legislate in an area which is a matter of national concern and which requires uniform regulation. Also, like the Florida statute, the Colorado Act interferes with the broad Federal authority over revenue, finance and currency to an impermissible extent and contravenes the national policy that people be free to deal in gold without restriction. In sum, Appellants respectfully submit that the Colorado legislature has overstepped its authority by attempting to regulate in an area within the exclusive control of the United States Government.

## B.

## THE COLORADO VALUABLE ARTICLES ACT VIOLATES THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION BECAUSE IT DIRECTLY BURDENS OR DISRUPTS THE FLOW OF INTERSTATE COMMERCE

As discussed *supra*, there are two alternative bases for finding state legislation to be constitutionally defective under the Commerce Clause. In addition to being invalid because it interferes in areas requiring uniform national regulation, the Colorado Act is defective for the additional reason that it directly burdens or disrupts the flow of interstate commerce.

The court in *Mid-Fla Coin Exchange, Inc. v. Griffin*, discussed *supra*, concluded that the interstate precious metals business would be disrupted by the enactment in at least three respects:

> (1) the requirement will operate to virtually eliminate Florida's numerous coin shows and all other precious metal transactions between Florida sellers and out-of-state buyers because an out-of-state buyer would not be able to remove any item of precious metal from the county in which it was purchased for a period of 15 days following the transaction; (2) the requirement will disrupt the practice of plaintiffs, and dealers similarly situated, whereby they typically relinquish their precious metal inventory to out-of-state wholesalers pursuant to a pre-arranged agreement; (3) the requirement will interfere with the practice of plaintiffs, and dealers similarly situated, of utilizing the FACTS teletype service to buy and sell coins and other items of precious metals in interstate channels. 529 F.Supp. at 1018.

The severity of these disruptions, the court added, would be accentuated by the fact that the price of gold and other precious metals fluctuates widely and rapidly on a day to day basis. 529 F.Supp. at 1018.

The Florida statute in *Mid-Fla* is indistinguishable, for purposes of determining constitutionality, from the Colorado Act. Like the Florida law, the Colorado law severely disrupts interstate commerce by, for example (1) burdening or eliminating transactions between in-state Colorado sellers and out-of-state buyers by means of the requirement that such buyers hold the articles in this state for 30 days; (2) prohibiting the normal business practices of Colorado dealers whereby they typically sell and relinquish purchased items to out-of-state wholesalers shortly after purchase; and (3) preventing or interfering with the use of teletype or computer services by means of which dealers typically make spot sales immediately after purchase. Indeed, the Colorado Act disrupts interstate commerce more drastically than the Florida statute. The Colorado Act imposes both a longer holding requirement (30 days) and a greater criminal penalty for a violation (a felony) than the Florida law. Therefore, the challenged Act is defective under the Commerce Clause for two reasons. As such, significant reasons exist for this Court to accept jurisdiction.

## II.

## THE COLORADO ACT IS PREEMPTED BY FEDERAL LEGISLATION

This Court has recently observed in *Silkwood v. Kerr-McGee Corporation*, ____ U.S. ____, 78 L.Ed.2d 443, at 452 (1984) that state law can be preempted in either of two general ways:

> If Congress evidences an intent to occupy a given field, any state law falling within that field is preempted. If Congress has not entirely displaced state regulation over the matter in question, state law is still preempted to the extent it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law, or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress. (Citations Omitted) *Silkwood v. Kerr-McGee Corp.*, 78 L.Ed.2d at 452.

The challenged Act is invalid under either analysis. As discussed, *supra,* the Act both interferes with an area requiring uniform national regulation and directly burdens interstate commerce. Not only does the Act stand as an obstacle to the accomplishment and execution of federal goals, it directly conflicts with federal legislation.

As previously discussed, Congress has expressed a clear intent to create a free and unfettered market in gold and currency. First, in a 1973 Act, Congress repealed the federal statute prohibiting persons from purchasing, holding selling or otherwise dealing with gold. P.L. 93-110, 87 Stat. 352 (Sept. 21, 1973), repealing 31 U.S.C.S., Sections 441 and 442. Secondly, in a related Act passed on September 21, 1973, Pub.L. 93-110, and amended on August 14, 1974, Pub.L. 93-373, Congress stated:

> *No provision of any law* in effect on the date of enactment of this Act and no rule, regulation or order on the date subsections (2) and (b) become effective *may be construed to prohibit any person from purchasing, holding, selling or otherwise dealing with gold* in the United States or abroad. (Emphasis added).

Subsequently, in 1979, Congress passed legislation specificaly stating that *"All claims and currencies of the United States ... regardless of when coined or issued, shall be legal tender for all debts,* public and private, public charges, taxes, duties and dues." 41 U.S.C.S. Section 392 (1979) (Emphasis added) *See also* 41 U.S.C.S. Section 457 (1979) (providing gold coins shall be legal tender in all payments).

Congress has further provided that all provisions attempting to restrict the use of any type of currency to satisfy a debt are void as against public policy. Specifically, the Act states:

> Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular type of coin or currency ... is declared to be against public policy; and no such provision shall be made with respect to any obligation ... 31 U.S.C. Section 463 (1979).

These federal statutory provisions have been very broadly construed as binding upon all non-federal entities, public as well as private. *See e.g. Radice v. Zaraty,* 293 Ala. 585, 308 So.2d 242 (1975); *Woodruff v. Mississippi,* 162 U.S. 291 (1896); *Allen v. Craig,* 1 Kan.App. 2d 301, 564 P.2d 552 (1977).

Further, federal statutes specifically provide for the "sale" by anyone at any time of gold or silver bullion to the federal government without *any* recording or holding requirements. *See e.g.* 31 U.S.C.S., Sections 327, 328, 358, 359, 360, 362, 394, 428, 429, 430. Certain aspects of the gold market remain regulated to a limited extent by federal statute. *See e.g.* 7 U.S.C.S. Section 23 (Supp. 1981) (providing that transactions for delivery of silver or gold bullion or

coins must comply with regulations of the Commodity Futures Trading Commission); 15 U.S.C.S. Sections 291-300 (1976) (regulating the marketing of gold and silver); and 12 U.S.C.S. 95a (1979) (granting the President certain emergency powers to regulate gold). Nonetheless, except to the limited extent gold remains regulated by these federal statutes, the right of every person to purchase, hold, sell or otherwise deal freely in gold and silver is implicitly authorized by the Congressional Acts cited above.

As explained *supra,* coins are defined as "valuable articles" under the Act. Further, according to the Act, the acceptance of a coin in full or partial payment of a debt constitutes a "purchase," and the Act totally prohibits any purchaser from "purchasing" or accepting a valuable article such as a coin from either a person without identification or a person under 18. Thus, the Colorado legislature has impermissibly attempted to ban the use by certain persons of United States coins and currencies to satisfy a debt to a person constituting a "purchaser." The Act also prohibits a purchaser from: (1) accepting gold or silver coins or bullion in a situation where he cannot fulfill the complex record keeping requirements of Section 105 of the Act; (2) from spending or selling silver coins for 30 days after "purchase" or acquisition of them, Section 106(1); and (3) from using any gold coins to satisfy a debt to a person who will not identify himself. Section 106(2).

Obviously, each of these prohibitions is inconsistent with the federal legislation set forth above. Indeed, a state statute could hardly be more incompatible with the mandate that all federal currency "shall be legal tender for all debts" and with the federal goal of promoting the free exchange of United States currency.

With respect to bullion, these restrictions are equally infirm. In addition the Act prohibits the transfer by any purchaser of non-assayed gold or silver bullion within thirty days of acquisition or "purchase." Section 106. Moreover, it prohibits the transfer of assayed gold or silver bullion by a purchaser to any person without identification. Section 106(2).

Clearly, the Act's thirty day holding requirement interferes with the right of a purchaser, in the exercise of his rights under the federal statutes cited above, to sell or transfer gold or silver bullion to the federal government at any time. Moreover, the Act's prohibition against purchasing gold from persons under 18 or persons without identification is completely incompatible with the above-cited federal statutes which express a clear intent to create an unrestrained market in gold.

In sum, Appellants respectfully submit that the Act seeks to ban or restrict transactions specifically authorized by the federal government. As such, the Act is preempted by Federal law under the Supremacy Clause.

## III.

## THE ACT IS VIOLATIVE OF APPELLANTS' FOURTH AMENDMENT RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES

The Act requires, *inter alia,* that each time a purchaser buys a valuable article, he must obtain identification and other information from the seller and must record numerous items of information about the purchase in a register. Section 105. In addition, the act requires every purchaser to:

> provide the local law enforcement agency, on a weekly basis, with two records, on a form to be provided by the local law enforcement agency, of all valuable articles purchased during the preceding week and one copy of the seller's declaration of ownership. Section 18-16-107(1).

Further, the Act requires every purchaser to make his register available to "any peace officer" for inspection at any reasonable time. Section 18-16-105(3). Finally, and perhaps most significantly, the Act requires every purchaser to permit any requesting law enforcement officer to inspect any valuable article which the purchaser has bought in the last thirty days. Section 106(1). Since the Act does not require that such inspection take place at a reasonable time, law enforcement officers are apparently authorized to inspect these articles at virtually any time.

The Act thus requires that, to avoid being charged with a felony, a purchaser must meticulously comply with extensive record keeping requirements and open up his books to peace officers at any "reasonable time." In addition, a purchaser is required to turn over his valuable articles to law enforcement officers upon demand, regardless whether there is probable cause and regardless of the time. To comply with these requirements, purchasers are forced to store their goods on premises and be exposed to theft.

The landmark Supreme Court case with respect to adminstrative searches is *Camara v. Municipal Court,* 387 U.S. 523 (1967). *Camara* involved a refusal by an individual to allow a city building inspector access to his apartment without a warrant. This Court held that such warrantless administrative searches could not be justified under the Fourth Amendment:

> We hold that adminstrative searches of the kind at issue here are significant intrusions upon the interests protected by the Fourth Amendment, that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual... 387 U.S. at 553-34.

Shortly thereafter, this Court decided *See v. City of Seattle,* 387 U.S. 541 (1967), in which *Camara* was expanded to cover inspections of private commercial premises. In the words of the Court:

> As we explained in *Camara,* a search of private houses is presumptively unreasonable if conducted without a warrant. *The businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property. The businessman, too, has that right placed in jeopardy if the decision to enter and inspect for violation of regulatory laws can be made and enforced by the inspector in the field* without official authority evidenced by a warrant. 387 U.S. at 543 (Emphasis added).

In subsequent cases, the Court carved out a limited exception to the administrative search warrant requirement enunciated in *Camara* and *See.* Thus, in *Colonnade Catering Corp. v. United States,* 397 U.S. 73 (1970) and *United States v. Biswell,* 406 U.S. 311 (1972), the Supreme Court held that warrantless administrative searches of certain "pervasively regulated" industries were constitutionally permissible under certain conditions. In sum, *Colonnade* and *Biswell* stand for the premise that a warrant may not be constitutionally required when Congress has reasonably determined that (1) warrantless searches are necessary to further a regulatory scheme; and (2) the

federal regulatory presence is sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes.

Thereafter, in *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978), the Supreme Court made it clear that *Biswell* and *Colonnade* represent a very narrow exception to the general warrant requirement and refused to expand such exception to cover safety inspections conducted pursuant to the Occupational Safety and Health Act ("OSHA"). Justice White stated:

> Certain industries have such a history of government oversight that no reasonable expectation of privacy... could exist for a proprietor over the stock of such an enterprise. Liquor [Colonnade] and firearms [Biswell] are industries of this type; when an entrepreneur embarks upon such a business, he has voluntarily chosen to subject himself to a full arsenal of governmental regulations.
>
> Industries such as these fall within the *'certain carefully defined classes of cases'* referenced in *Camara, supra,* at 528, 18 L.Ed.2d 930, 87 S.Ct. 1727. The element that distinguishes these enterprises from ordinary businesses is a long tradition of close government supervision, of which any person who chooses to enter such a business must already be aware. 'A central difference between those cases [Colonnade and Biswell] and this one is that businessmen engaged in such federally licensed and regulated enterprises accept the burdens as well as the benefits of their trade, where the petitioner here was not engaged in any regulated or licensed business. The businessman in a regulated industry in effect consents to the restrictions placed upon him.' *Almedia-Sanchez v. United States,* 413 U.S. 266, 271, 37 L.Ed.2d 596, 93 S.Ct. 25, 35 (1973). *The clear import of our cases is that the closely regulated industry of the type*

involved in Colonnade and Biswell is the exception. The Secretary would make it the rule. 436 U.S. 313 (Emphasis added).

The *Marshall* court noted that the OSHA scheme "devolves almost unbridled discretion upon executive and administrative officers, particularly those in the field, as to when to search and whom to search." 436 U.S. at 323. Thus, the Court concluded, a warrant was constitutionally required to conduct OSHA inspections in order to assure a nonconsenting owner that the contemplated search was "authorized by statute, and ... pursuant to an *administrative plan containing specific neutral criteria.*" 436 U.S. at 323 (Emphasis added).

Like the OSHA provision involved in *Marshall,* the above-cited provisions of the Act "devolve almost unbridled discretion" upon law enforcement officials charged with enforcing the Act. The Act authorizes policemen to choose virtually any time, place and manner of intruding into purchasers' businesses and searching their records. Moreover, it requires neither a warrant nor a showing of probable cause. It also does not require that the businessman be notified in advance so that arrangements can be made for the owner to be present. Further, it does not require the officer to prove that he is charged with enforcing the Act or in any way limit the frequency or scope of his searches through the books.

Moreover, the search provisions of the Act do not fit within the narrow *Biswell-Colonnade* exception to the warrant requirement. First, it is quite clear that the type of businesses subject to the Act do not constitute "pervasively regulated businesses" within the meaning of the *Colonnade-Biswell* exception. Second, it cannot be said that the

search provisions of the Act are necessary to further a "sufficiently comprehensive and defined" regulatory scheme as contemplated by the *Colonnade-Biswell* exception.

In *Mid-Fla Coin Exchange, Inc. v. Griffin,* 529 F.Supp. 1006 (M.D. Fla. 1981), a federal court addressed an enactment providing that records which precious metal dealers were required to keep were to be subject at all times to inspection by any law enforcement officers. As discussed, *supra,* the Florida statute in *Mid-Fla* is virtually identical to the challenged statute. The court concluded these provisions authorized unreasonable searches:

> As the Supreme Court made clear in *Marshall,* the closely regulated industry of the type involved in *Colonnade* and *Biswell* is the exception, rather than the rule. 436 U.S. at 313. *The secondhand precious metal businesses of the type sought to be regulated by the state statutes challenged herein do not have a long history of pervasive regulation such as would justify warrantless inspections of their premises. To the contrary, when Congress repealed federal prohibitions on the private ownership of gold in 1973, see text, supra, it expressed an intent that persons should be free to buy, sell or otherwise deal in gold, without restriction.*
>
> *The pervasively regulated businesses exception has thus far been limited to the liquor and firearms industries.* Those products have long histories of close governmental regulation primarily because they are themselves inherently dangerous. The only justification for the instant attempt to regulate precious metals, however, is the interest in combatting precious metal thefts. Although this is unquestionably a valid interest, the supreme Court has made it clear that fundamental Fourth Amendment rights are not to be dispensed with 'simply because of a generalized urgency of law enforcement' *Torres v. Commonwealth of Puerto Rico,* 442 U.S. 465, 473, 99 S.Ct. 2425, 61 L.Ed.2d 1

> (1979) ... Consequently, the pervasively regulated businesses exception does not operate to remove [the statute] from the general rule that administrative searches are invalid absent a search warrant. 529 F.S. at 1026 (Emphasis added).

The *Mid-Fla* court determined that the record keeping requirements further violated the Fourth Amendment by authorizing, in essence, unreasonable subpoena duces tecum without providing for judicial review. *See also Joe Flynn Rare Coins, Inc. v. Stephan,* 526 F.Supp. 1275 (D. Kan. 1981).

The unequivocal decisions of this Court, together with federal cases examining virtually identical statutes, reveal that the inspection and record keeping requirements of the Act authorize unreasonable searches and seizures in violation of the Fourth Amendment. Therefore, this Court should accept jurisdiction on this important federal issue.

## IV.

## THE ACT IS UNCONSTITUTIONALLY VAGUE IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FEDERAL CONSTITUTION

### A. Introduction

A basic tenant of due process of law, guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States is that a statute, especially in the area of criminal law, must clearly define that which it requires or that which it prohibits. As this Court stated in *Connolly v. General Construction Company,* 269 U.S. 385 (1926), a penal statute, and particularly one setting forth a new offense, must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them

liable to its penalties. The rationale underlying the vagueness principles was perhaps best articulated by this Court in *Grayned v. City of Rockford,* 408 U.S. 104 (1972):

> It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for these who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. 408 U.S. at 108-09.

Thus, to determine whether a statute is so vague as to violate due process, two basic tests are applied. The first involves a determination whether the statute provides fair notice of what conduct is prohibited. *United States v. Harriss,* 374 U.S. 612, 74 S.Ct. 808, 812 (1954); *Connolly,* 269 U.S. 385. The second is whether the statute is sufficiently definite to provide guidelines for enforcement and adjudication. *Smith v. Goguen,* 415 U.S. 566 (1974); *Papachristou v. City of Jacksonville,* 405 U.S. 156 (1972).

In measuring the Act against these yardsticks, it is important to note that the Act contains no intent requirement. In *Screws v. United States,* 325 U.S. 91, 103 (1945), this Court held that a statute's specific intent requirement cured its vagueness. Accordingly, *Screws* establishes that constitutional specificity requirements are much stricter

for statutes containing no specific intent requirements. Thus, because the Act criminalizes specific activities or omissions regardless of the actor's intent, it constitutes an absolute liability statute and must be strictly scrutinized.

### B. The Definitions of "Valuable Article" and "Precious Or Semiprecious Metals Or Stones" Within The Act are Impermissibly Vague

The Act makes it a felony for purchasers to purchase "valuable articles" from certain persons. Thus, "valuable article" is a crucial term of the Act demanding a precise definition.

"Valuable article" is defined by the Act as "any tangible personal property consisting in whole or in part of precious or semiprecious metals ... *including but not limited to,* household goods, jewelry, United States commemorative medals or tokens and gold and silver bullion." Thus, even apart from the fact that the words "jewelry" and "household goods" are very vague and undefined, the entire definition of "valuable article" is left wide open by the phrase "including but not limited to." The result of such phrase is that a person may be charged with a felony for purchasing an item which he did not regard as valuable and which was not listed in the Act, but which the police regarded as valuable. Obviously, such an open ended provision fails to give purchasers fair warning as to what types of non-itemized items are covered by the Act.

Further, the fact that the definition of "valuable article" is tied to the term "precious or semiprecious metals or stones," renders it even more obscure. Section 18-16-102(3) defines "precious or semiprecious metals or stones" as:

> ... such metals, as,*but not limited to,* gold, silver, platinum, and pewter and such stones as, *but not limited to,* alexandrite, diamonds, emeralds, garnets, opals, rubies, sapphires and topaz. For the purposes of this article, ivory, coral, pearls, jade, *and such other minerals, stones or gems as are customarily regarded as precious or semiprecious* are deemed to be precious or semiprecious stones. (Emphasis added).

Such definition raises more questions than it answers. Absolutely no guidance is given by the Act. Police officers and potential offenders are only left to guess. The result of a wrong guess may be a felony conviction.

### C. The Definition Of "Purchaser" Within The Act Is Impermissibly Vague

The Act places most of its requirements upon "purchasers," defined in Section 102(5) as:

> Any person holding himself out to the public as being engaged in the business of buying *valuable articles* or any person who purchases five or more *valuable articles* during any thirty-day period. *Purchaser does not include a person purchasing valuable articles from an estate or from a retail or wholesale merchant.* (Emphasis added).

Because the definition of "purchaser" is tied to the phrase "valuable articles," all vagueness inherent in the term "valuable articles" is carried over to the definition of "purchaser." In addition, the definition of purchaser is rendered even more unintelligible by the fact that it does

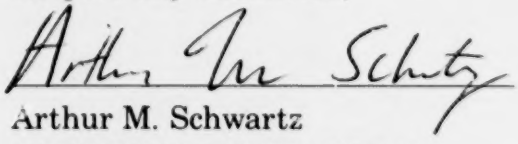
not indicate how long ago the five purchases must have been made before the buyer ceases to be a "purchaser." Because the definition contains no time limits, a person could be regarded as a purchaser even though he has not purchased valuables for years, so long as he purchased five valuables during one month. The time limits are left to the discretion of the police officers. Further vagueness problems are created by the exception within the definition of purchaser for persons purchasing from estates and from retail or wholesale merchants.

In sum, the term "purchaser" is defined so broadly and vaguely that it leaves the Appellants with no way of knowing whether they fall within its scope or whether they are exempted. Rather, the basic policy decision as to who is a "purchaser" falling within the purview of the Act is left to law enforcement officials, judges and juries.

## CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,



Arthur M. Schwartz
ARTHUR M. SCHWARTZ, P.C.
1650 Market Street
Denver, Colorado 80202
(303)893-2500

Counsel for Appellants

# APPENDIX A

SUPREME COURT, STATE OF COLORADO April 22, 1985
CASE NO. 82SA465

EXOTIC COINS, INC., a Colorado corporation d/b/a WESTMINSTER COIN & JEWELRY, LTD.; JEFF ANDERSON d/b/a WESTMINSTER GOLD AND SILVER EXCHANGE; JOHN BIELASKI d/b/a/ GOLD DUST COIN CENTER,

Plaintiffs-Appellants,

v.

PAUL Q. BEACOM in his official capacity as District Attorney for the County of Adams; BERT JOHNSON in his official capacity as Sheriff for the County of Adams; THE CITY OF FEDERAL HEIGHTS, an Incorporated Municipality; LESTER M. BAUER in his official capacity as Mayor for the City of Federal Heights; DOUG FARRIS in his official capacity as Chief of Police for the City of Federal Heights; THE CITY OF WESTMINSTER, an Incorporated Municipality; VI JUNE in her official capacity as Mayor for the City of Westminster; KENNETH HUCK in his official capacity as Chief of Police for the City of Westminster; J.D. MacFARLANE in his official capacity as Attorney General for the State of Colorado,

Defendants-Appellees.

Appeal from the District Court, County of Adams
Hon. Oyer G. Leary, Judge

EN BANC JUDGMENT AFFIRMED

SUPREME COURT, STATE OF COLORADO April 22, 1985
CASE NO. 82SA329

THE PEOPLE OF THE STATE OF COLORADO,
Plaintiff-Appellant,

v.

JAY DAVID MELTZER, Defendant-Appellee.

Appeal from the District Court, County of Jefferson
Hon. Michael Villano, Judge

EN BANC JUDGMENT REVERSED
AND CAUSE REMANDED

Nolan L. Brown, District Attorney
Mary A. Malatesta, Deputy District Attorney
Golden, Colorado

Attorneys for Plaintiff-Appellant

Arthur M. Schwartz, P.C.
Arthur M. Schwartz
Kay J. Rice
Irvin Borenstein
Denver, Colorado

Attorneys for Defendant-Appellee

JUSTICE LOHR delivered the Opinion of the Court.

These two cases, which we have consolidated for decision, present broad-ranging challenges to the constitutionality of the Purchasers of Valuable Articles Act, §18-16-101 to -110, 8 C.R.S. (1984 Supp.) (the Act). We conclude that the Act can survive each of these assaults on its constitutional sufficiency. Therefore, we affirm the judgment of the Adams County District Court in *Exotic Coins, Inc. v. Beacom*, 82SA465, denying injunctive relief to restrain enforcement of the Act, and reverse the judgment of the Jefferson County District Court in *People v. Meltzer*, 82SA329, dismissing criminal charges for violation of the Act.

The Act was adopted "to aid law enforcement officials in the discovery and identification of sellers of stolen valuable articles and in the identification and recovery of stolen valuable articles by providing a mandatory record-keeping and reporting system by purchasers and by providing a holding period during which time such articles shall not be disposed of or altered in any manner." §18-16-101, 8 C.R.S. (1984 Supp.). To accomplish these objectives, the Act requires that persons engaged in the business of buying valuable articles, consisting of precious or semiprecious metals or stone, obtain adequate identification from the seller, §18-16-103, secure a written declaration of the seller's ownership, §18-16-105(1), keep a register recording detailed information about each purchase, §18-16-105, make the register available to any peace officer for inspection at any reasonable time, §18-16-105(3), hold certain types of such property in unaltered form for thirty days from the date of purchase, §18-16-106(1), and permit inspection of the articles by law enforcement officers during the holding period, *id.* Every purchaser must also provide weekly reports to the local law enforcement agency reflecting specified information about each purchase. §18-16-107. Persons engaged in

the business of buying valuable articles may not purchase such an item from any person under the age of eighteen years. §18-16-104. The Act exempts from its requirements certain transactions by private collectors and certain purchases made exclusively in interstate commerce. §18-16-109. Violation of the Act is a class 5 felony. §18-16-108. The Act is set forth in full in Appendix A to this opinion.

I.

The plaintiffs in *Exotic Coins, Inc. v. Beacom* are owners and operators of businesses in Adams County that buy and sell coins having numismatic value, and other articles containing gold, silver and other precious or semi-precious metals or stones. They sought declaratory and injunctive relief to obtain a declaration that the Act is unconstitutional and to restrain the defendant officials from enforcing the Act. The trial court issued a temporary restraining order but, after a later hearing, dissolved that order and denied a preliminary injunction. On July 27, 1982, after trial, the court ruled that the plaintiffs had failed to establish that the Act is unconstitutional, and denied a permanent injunction. The plaintiffs appealed, invoking the jurisdiction of this court because the constitutionality of a statute is in question. *See* §13-4-102(1)(b), 6 C.R.S. (1973).

In *People v. Meltzer,* the defendant, Jay David Meltzer, was charged with three counts of violation of the Act. Meltzer is a merchant who deals in coins in his Lakewood, Colorado, store. The direct criminal information alleged that Meltzer purchased gold and silver coins without first securing adequate identification from the seller contrary to the requirements of section 18-16-103, purchased such coins from a person under the age of eighteen in violation of

section 18-16-104, and failed to keep a register and record of the purchase of such coins as required by section 18-16-105. The defendant moved to dismiss the charges, asserting that the Act is unconstitutional in several respects. The trial court granted the motion, concluding that the provisions of the Act upon which the charges were based could not be constitutionally applied to the defendant because "the regulation of gold, its possession and transfer has been preempted by the Congress of the United States," with the result that "any attempted regulation by an individual state must fail." The court held that the charge based on the register and record requirements of section 18-16-105 was invalid for the additional reason that the provision allowing peace officers to inspect those records without first obtaining a search warrant contravenes the protections against unreasonable searches and seizures contained in the United States and Colorado constitutions. The People appealed from the judgment of dismissal. Jurisdiction over that appeal is also in this court because the constitutionality of the Act is in question. *See* §13-4-102(1)(b), 6 C.R.S. (1973).

In *Exotic Coins, Inc.* the appellant coin dealers urge that the Act is unconstitutional because (1) it infringes on the federal government's exclusive jurisdiction over the regulation of currency and gold and silver bullion, *see* U.S. Const. art. I, §8, cl. 5, the United States Congress has preempted regulation of the subject matter, *see* U.S. Const. art. VI, cl. 2, and it places an impermissible burden on interstate commerce, *see* U.S. Const. art. I, §8; (2) the inspection of records provisions violate the federal and state constitutional protections against unreasonable searches and seizures, *see* U.S. Const. amend. IV and Colo. Const. art. II, §7; (3) it is unconstitutionally vague in

contravention of U.S. Const. amend. XIV and Colo. Const. art. II, §25; (4) it purports to establish a felony offense without requiring a culpable mental state, a violation of due process of law, *see* U.S. Const. amend. XIV and Colo. Const. art. II, §25; (5) the reporting requirements are in conflict with the privilege against self incrimination embodied in U.S. Const. amend. V and Colo. Const. art. II, §18. In *People v. Meltzer*, the trial court relied on the exclusive federal jurisdiction, preemption, and unreasonable search and seizure grounds in holding unconstitutional the provisions of the Act upon which the charges against Meltzer were based. On appeal, the People direct their argument for reversal to those issues.[1] In this opinion, we sometimes refer to the plaintiffs in *Exotic Coins, Inc.* and the defendant in *People v. Meltzer* collectively as the challengers, or the coin dealers. We also use that same terminology in describing only the plaintiffs in *Exotic Coins, Inc.* where the discussion is limited to that group's contentions.

In *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982) we considered the Act for the first time, in the context of an appeal by certain Denver merchants who were engaged in the business of buying and selling precious metals and stones and sought reversal of the denial of a preliminary injunction against enforcement of that statute. The appellants asserted the vagueness, unreasonable search, and federal supremacy arguments that are presented to us again today, and also contended that the Act was unconstitutional for additional reasons not advanced by the parties in the cases now before us. We sustained denial of the preliminary injunction, affirming the trial court's ruling that the merchants had not demonstrated a reasonable probablity of success in their assaults upon the constitu-

tionality of the Act. In so holding we did not discuss the constitutional arguments in detail. To resolve the present cases, however, it is necessary that we do so.

We begin with the familiar principle that legislation is presumed to be constitutional and a challenger has the burden of proving invalidity beyond a reasonable doubt. *People v. Alexander,* 663 P.2d 1024 (Colo. 1983); *Bollier v. People,* 635 P.2d 543 (Colo. 1981); *People in the Interest of C.M. and E.M.,* 630 P.2d 593 (Colo. 1981); *People v. Edmonds,* 195 Colo. 358, 578 P.2d 655 (1978); *Flank Oil Co. v. Tennessee Gas Transmission Co.,* 141 Colo. 554, 349 P.2d 1005 (1960). We address the constitutional questions in the order stated above, and conclude that neither the merchants group in *Exotic Coins, Inc.* nor the defendant in *People v. Meltzer* has succeeded in carrying that heavy burden.

## II.

The challengers to the Act contend that it intrudes on the exclusive monetary powers of the Congress. Alternatively, they assert that even if state legislation concerning trade in gold and silver coins and bullion were permissible in the absence of congressional legislation, Congress has occupied the field of regulation of that trade, thus preempting that field and foreclosing state legislation such as the Act. These positions are founded on the seminal principle that the laws of the United States are the supreme law of the land, any laws of any state to the contrary notwithstanding. U.S. Const. art. VI, cl. 2. We conclude, however, that the regulations imposed by the Act upon trading in valuable articles do not concern a field of activity either inherently within the exclusive control of the

federal government or preempted by congressional action. We also reject the related argument advanced by the coin dealers that the Act violates the Commerce Clause, U.S. Const. art. I, §8, cl. 3, because the regulation of activities pertaining to the buying, selling and holding of gold is of such predominant national concern that state regulation is forbidden.

**A.**

Congress has the power "[t]o coin money, regulate the value thereof, and of foreign coins," U.S. Const. art. I, §8, cl. 5, and no state shall "coin money; emit bills of credit [or] make anything but gold and silver coin a tender in payment of debts ...," U.S. Const. art. I, §10, cl. 1. Under Congress' constitutional authority with respect to money, it can create "a currency, uniform in value and description, and convenient and useful for circulation." *Veazie Bank v. Fenno,* 75 U.S. (8 Wall.) 533, 548 (1869); *see Legal Tender Case,* 110 U.S. 421, 445 (1884); *Legal Tender Cases,* 79 U.S. (12 Wall.) 457, 545, 546 (1870). Congress may attach to the ownership of gold and silver "those limitations which public policy may require by reason of their quality as legal tender and as a medium of exchange." *Norman v. Baltimore & O.R.R. Co.,* 294 U.S. 240, 304 (1935). It follows that the states cannot declare what shall be money, or regulate its value. *Id.* at 303.

The Act does not violate these principles. It does not regulate gold and silver coins as currency. Instead, it regulates trade in such coins as articles having value for their metallic content and worth as collectors' items. The regulations impose no constraints on the price to be paid for gold or silver coins or other valuable articles. They simply

require that records of transactions be maintained and that certain valuable articles be held by the purchaser for thirty days and be made available to law enforcement officers for inspection during that time. Therefore, the Act's regulation of the purchasing of gold and silver coins does not infringe upon Congress' exclusive power with respect to money. *See Equitable Life Assurance Society v. Grosvenor*, 426 F. Supp. 67, 72 (W.D. Tenn. 1976) (distinction between gold as a commodity and gold as an index of value); *In re Midas Coin Co.*, 264 F. Supp. 193 (E.D. Mo. 1967), *aff'd sub nom. Zuke v. St. John's Community Bank*, 387 F. 2d 118 (8th Cir. 1968) (money as a medium of exchange vs. money as a commodity).

**B.**

The coin dealers assert that even if states have the power to legislate on subjects covered by the Act in the absence of congressional action, Congress has preempted the field by its extensive legislative activity. Thus, the challengers argue, under the Supremacy Clause, U.S. Const. art. VI, cl. 2, the Act cannot be sustained.

Although Congress has enacted many provisions concerning gold and silver coins and bullion under its power over the currency and related powers, it has not specifically stated whether states remain free to legislate in the area. To resolve this question, it must be determined whether the scheme of federal regulation is so pervasive that it is reasonable to infer that Congress left no room for the states to supplement it, whether the federal statutes touch a field in which the federal interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject, and whether enforcement of the

state act presents a serious danger of conflict with the administration of the federal program. *Pennsylvania v. Nelson,* 350 U.S. 497 (1956); *see Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218 (1946); *Hines v. Davidowitz,* 312 U.S. 52 (1941). This requires careful examination of the federal and state laws.

As developed in some detail in *Mid-Fla Coin Exchange, Inc. v. Griffin,* 529 F. Supp. 1006 (M.D. Fla 1981), a case upon which the coin dealers rely, Congress asserted extensive authority over gold by legislation enacted during the Great Depression of the 1930s. Thus, in the Gold Reserve Act of 1934, Pub. L. No. 48-87, 48 Stat. 337, Congress authorized the Secretary of the Treasury to issue regulations prescribing conditions under which gold could be acquired and held, transported, melted or treated, imported, exported or earmarked. *Id.,* § 3. Any gold withheld, acquired, transported, melted or treated, imported, exported, earmarked, or held in custody in violation of the act or regulations issued thereunder could be seized and condemned. *Id.,* §4.

In 1973, however, Congress repealed sections 3 and 4 of the Gold Reserve Act of 1934 by Pub. L. 93-110, 87 Stat. 352. As amended a year later by Pub. L. 93-373, 88 Stat. 445, this new legislation, which became effective December 31, 1974, swept away prior laws and regulations prohibiting "any person from purchasing, holding, selling, or otherwise dealing with gold in the United States or abroad." Pub. L. No. 93-110, §3(b), 87 Stat. 352 (1973). Pub. L. No. 93-110 and Pub. L. No. 93-373 were repealed in 1982 when Congress revised and recodified title 31 of the U.S. Code, Pub. L. No 97-258, 96 Stat. 89 (1982). *See also Feldman v. Great Northern Railway Co.,* 428 F. Supp. 979 (S.D. N.Y. 1977), for

a more detailed history of Congressional legislation with respect to gold during the period from the Great Depression forward.

Measuring the presently existing system of federal laws against the Act, we find very little overlap. Both touch upon gold and silver coins. A review of the federal laws relating to gold and silver coins, however, reflects that it is the minting and issuance of such coins and their effect as legal tender that have occupied the continued attention of the Congress. *See, e.g.,* 31 U.S.C. §5103 (1982) (United States coins are legal tender for debts); 31 U.S.C. §321(a)(4) (1982) (Treasury Secretary empowered to mint coins); Olympic Commemorative Coin Act, Pub. L. No. 97-220, §2(a)(1), 2(b)(1), 3, 96 Stat. 222 (1982) (authorizing issuance and sale of commemorative gold and silver coins); 31 U.S.C. S 5118(b) (1982) (United States Government may not pay out or deliver gold coin); 31 U.S.C. §5118(d) (obligations issued prior to October 27, 1977, that require payment in gold or gold coin can be discharged on payment of any legal tender); 31 U.S.C. §5112(e) and (f) (1982) (authorizing the minting of the Eisenhower dollar and Washington half-dollar, each containing silver); 31 U.S.C. §5120(a) (1982) (obsolete and worn coins withdrawn from circulation shall be melted down).

Other current federal laws concern gold and silver bullion. The Treasury Secretary is empowered to refine, assay and cast bullion, 31 U.S.C. §321(a)(4), 5121 (1982), and there are criminal penalties for falsely marking assayed gold and silver. 15 U.S.C. §§291-300 (1976). The Treasury Secretary may also buy and sell gold and silver under certain circumstances. 31 U.S.C. §5116 (1982). During a national emergency the President may regulate or prohibit the importing, exporting, hoarding, melting or earmarking

of gold or sivler coin or bullion. 12 U.S.C. §95a (1945). The Commodity Futures Trading Commission has the power to regulate margin account transactions in gold and silver bulk coins or bullion. 7 U.S.C. §23(b) (1980).

Purchasers of gold or silver coins, who are regulated by the Act, are interested in these coins for their metallic value or value as collectors' items, rather than for their value as currency. We perceive nothing in the federal laws concerning the regulation of gold and silver coins and bullion that reflects pervasive federal regulation of the activities toward which the Act is directed. Nor has there been demonstrated a dominant federal interest precluding enforcement of state laws such as the Act. Enforcement of the Act poses no apparent risk of conflict with the administration of federal laws. Therefore, we conclude that Congress has not preempted the field covered by the Act as it relates to gold and silver coins and bullion. *See Pennsylvania v. Nelson.*

In contending for a contrary result, the challengers rely on *Mid-Fla Coin Exchange, Inc. v. Griffin,* 529 F. Supp. 1006 (M.D. Fla. 1981), in which the court concluded that regulation of activities pertaining to the buying, selling and holding of gold by private citizens has always been a matter of national, rather than local, concern. As a consequence, the court held a Florida statute similar to the Act to be in violation of the Commerce Clause, relying upon the history of congressional legislation from the Great Depression onward and the impact of gold on the national and world economy to demonstrate the validity of its premise of federal primacy. We view that history differently. No matter how extensive congressional occupation of the field of gold and silver ownership and trade may have been while sections 3 and 4 of the Gold Reserve Act of 1934 were in effect, Congress later renounced prohibition of purchasing,

holding, selling or otherwise dealing in gold. Pub. L. 93-110, 87 Stat. 352, as amended by Pub. L. 93-373, 88 Stat. 445. Laws enacted since the repeal of these statutes, all of which are codified in title 31 of the U.S. Code, do not restrict private transactions in gold. *See* 31 U.S.C. §§5101-5122. Moreover, the narrow scope of regulation effected by the Act does not infringe on national or international monetary policy. We perceive no continuing intention of Congress to preclude state regulation such as the Act, particularly where, as here, strong local interests underlie that regulation. *See Huron Portland Cement Co. v. City of Detroit,* 362 U.S. 440, 443 (1960) (congressional intent to preempt state regulation not to be implied unless fair interpretation of federal legislation requires that conclusion).

The final preemption argument concerns Pub. L. No. 93-373, §2, 88 Stat. 445 (1974), and Pub. L. No. 93-110, §3, 87 Stat. 352 (1973), which together provided that no provision of any prior law, rule, regulation, or order "may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold.... " *Id.* The challengers to the Act assert that this provision created an unfettered "right to own and trade gold." The contrary view is that it simply swept aside existing regulation, without precluding future regulation.

We believe that the latter view is correct, for several reasons. First, the statute itself limited its impact to provisions of law in effect on the date of its enactment. Federal laws regulating certain transactions in gold were subsequently enacted. 7 U.S.C. §23(b) (1980). Also, Pub. L. No. 93-110 was expressly repealed in 1982, when all related laws of continuing force and effect were recodified in Title 31 of the United States Code. Pub. L. No. 97-258, §5, 96 Stat. 877, 1081-82 (1982). Finally, the legislative history makes it

apparent that this law was directed at specific existing federal regulations originally promulgated pursuant to 12 U.S.C. §95a (1945). 1974 U.S. Code Cong. & Ad. News 4030; 1973 U.S. Code Cong. & Ad. News 2050. *See Feldman v. Great Northern Ry. Co.*, 428 F. Supp. 979 (S.D.N.Y. 1979). We conclude that the Act is not preempted by federal law.

## C.

The coin dealers have also argued that the Act places an impermissible burden on interstate commerce. In support of this assertion, they rely heavily on *Mid-Fla Coin Exchange, Inc. v. Griffin*, 529 F. Supp. 1006 (M.D. Fla. 1981). In *Mid-Fla*, the plaintiffs attacked the constitutionality of a Florida statute similar in purpose to the one at hand. The case was before the district court on a motion for preliminary injunction, and the court therefore found it necessary to determine the likelihood that the plaintiffs would prevail on the merits. In doing so, the court found that the act in question was probably unconstitutional, in part because of a provision that required purchasers to retain any purchased item of precious metal for fifteen days following submission of records to law enforcement authorities. This fifteen-day holding requirement was found to disrupt interstate commerce in gold in contravention of national policy. The court in *Mid-Fla* reached this conclusion in part because it found that Public Law 93-373, quoted above, sweeping aside prior laws and regulations preventing the owning or trading of gold, preempted any attempt by the states to regulate gold. Our view, expressed in section II B, that this legislation was not meant to preclude state regulation of the matters covered by the Act compels us to reach a different conclusion.

The Commerce Clause gives Congress the power to regulate commerce among the several states. U.S. Const. art. I, §8, cl. 3. In the absence of federal legislation, however, states are free to regulate local aspects of interstate commerce. *Cooley v. Board of Wardens,* 53 U.S. (12 How.) 299 (1851). In absence of congressional action,

> [t]here has ... been left to the states wide scope for the regulation of matters of local state concern, even though it in some measure affects the commerce, provided it does not materially restrict the free flow of commerce across state lines, or interfere with it in matters with respect to which uniformity of regulation is of predominant national concern.

*Southern Pacific Co. v. Arizona,* 325 U.S. 761, 770 (1945). A state law that discriminates against interstate commerce is invalid. *City of Philadelphia v. New Jersey,* 437 U.S. 617 (1978); *Best & Co., Inc. v. Maxwell,* 311 U.S. 454 (1940); *see Matthews v. Department of Revenue,* 193 Colo. 44, 562 P.2d 415 (1977). Absent congressional preemption, however,

> [w]here the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. *Huron Cement Co. v. Detroit,* 362 U.S. 440, 443 [1960]. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

*Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

> In determining whether state regulation has been preempted by federal action, 'the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the State.'

*Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 443 (1960), quoting from *Savage v. Jones*, 225 U.S. 501, 533 (1912).

The court in *Mid-Fla* found the statute before it defective primarily because it concluded that gold regulation was an area of national concern already regulated by the federal government. We noted earlier, however, that although federal regulation of currency is pervasive, the Colorado Act concerns regulation of gold and silver coins not as currency but as valuable articles, and hence it does not occupy an area where there is a predominant federal interest in uniformity of regulation.

Turning to the issue of impeding the free flow of commerce, Colorado's statute differs significantly from the Florida regulation at issue in *Mid-Fla*. The Florida law required that any articles containing precious metals be held for fifteen days before being removed from the county. In contrast, section 18-16-106(2), 8 C.R.S. (1984 Supp.), provides that "[s]tamped and assayed gold and silver bullion and gold coins shall not be subject to the holding requirement imposed by subsection (1) of this section." This difference is significant, because while there is no uniform federal regulation of trade in gold or silver coin or metal as commodities, there is some federal regulation of transac-

tions in gold and silver bullion. *See*, 31 U.S.C. §§321(a)(4), 5116, 5121 (1982); 7 U.S.C. §23(b) (1980); 12 U.S.C. §95a (1945). As noted earlier, regulation by the federal government in this narrow area is not pervasive and there is no evidence of a necessity for a uniform federal scheme, but by exempting gold coin and gold and silver bullion from the requirements of the holding period, the Colorado law avoids even the possibility of infringing on interstate commerce in an area in which Congress has expressed an interest, and minimizes any imposition on the free flow of commerce.

In addition, the Act is a legitimate exercise of the state's police power designed to protect citizens by facilitating the recovery of stolen valuables and the apprehension of thieves. It is not a discriminatory statute. Its applicability is limited to persons doing business as purchasers of valuable articles in Colorado. The casual collector is not subject to the Act's requirements. §18-16-102(5), 18-16-109, 8 C.R.S. (1984 Supp.). Moreover, the Act expressly provides that it shall not apply "to valuable articles purchased exclusively in interstate commerce and paid for by check mailed to the seller in another state...." §18-16-109, 8 C.R.S. (1984 Supp.). We conclude that the Act "regulates even-handedly to effectuate a legitimate local interest," the state interest is weighty. "[the Act's] effects on interstate commerce are only incidental," and it has been designed to minimize its effects on interstate commerce. *See Pike v. Bruce Church, Inc.* 397 U.S. 137, 142 (1970).

Accordingly, we hold that the Act does not violate the Commerce Clause of the United States Constitution.

## III.

## A.

The Act contains a number of provisions requiring that purchasers of valuable articles maintain records of transactions and allow those records and the purchased articles to be inspected by law enforcement officers. The merchant appellants in *Exotic Coins, Inc.* challenge all of these requirements as inconsistent with constitutional protections against unreasonable searches and seizures. *See* U.S. Const. amends. IV, XIV; Colo. Const. art. II, §7. Defendant Meltzer supports the district court's ruling that the record keeping requirements of section 18-16-105 under which he was charged are invalid for the same reasons.

The Act requires that a purchaser of valuable articles keep a register recording the name, address, date of birth and identification number of the seller; the date, time and place of purchase; and an accurate and detailed account and description of each valuable article purchased. §18-16-105(1), 8 C.R.S. (1984 Supp.). The purchaser must also obtain a written declaration of the seller's ownership. *Id.* The register shall be made available "to any peace officer for inspection at any reasonable time," §18-16-105(3), and any law enforcement officer may also inspect valuable articles in the thirty-day period following purchase during which purchasers are required to hold such articles unaltered in form. §18-16-106(1). This holding period does not apply to stamped and assayed gold and silver bullion and gold coins; instead, the purchaser must record the identity of the person to whom he transfers such items, and the date, time and place of transfer. §18-16-106(2). Purchasers are required to provide to the local law enforcement agency on a weekly basis records of valuable articles

purchased during the preceding week and a copy of the seller's declaration of ownership. §18-16-107(1). A copy of these documents must also be forwarded to the local law enforcement agency having jurisdiction in the area where the seller resides. §18-16-107(2).

Under the Act, an officer may examine the register at any reasonable time and may also inspect valuable articles during the holding period. The Act does not require that the officer obtain a subpoena or a warrant before conducting these searches. The United States Supreme Court has explained the protections provided by administrative subpoena and search warrant requirements. "[T]he Fourth Amendment requires that [an adminstrative] subpoena [for books or records] be sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.... [T]he subpoenaed party may obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." *See v. City of Seattle,* 387 U.S. 541, 544-45 (1967); *see Pignatiello v. District Court,* 659 P.2d 683 (Colo. 1983); *Charnes v. DiGiacomo,* 200 Colo. 94, 612 P.2d 1117 (1980). A warrant "provide[s] assurances from a neutral officer that the inspection is reasonable under the Constitution, is authorized by statute, and is pursuant to an administrative plan containing specific neutral criteria ... [and] advise[s] the owner of the scope and objects of the search.... " *Marshall v. Barlow's, Inc.,* 436 U.S. 307, 323 (1978).[2] The coin dealers assert that an adminstrative search conducted without one of these safeguards violates the constitutional guarantees against unreasonable searches and seizures.

The challengers again place reliance on *Mid-Fla Coin Exchange, Inc. v. Griffin,* 529 F. Supp. 1006 (M.D. Fla. 1981). In that case the court tested a Florida statute closely

similar to the Act and concluded that, whether analyzed under the administrative subpoena cases or the warrantless administrative inspections authorities, the statutorily-authorized inspection of records and articles purchased was contrary to the Fourth Amendment. The court concluded that absence of standards concerning the businesses to be selected for search and the frequency of searches, the broad scope of permissible searches in relation to their legitimate purpose, and the absence of provisions for judicial screening in advance of search were fatal to the statute.

We conclude that a careful reading of the United States Supreme Court decision in *Donovan v. Dewey,* 452 U.S. 594 (1981), a case that was not discussed in *Mid-Fla,* resolves this issue in favor of the constitutional sufficiency of the Act. In *Donovan,* the Court held that the Secretary of Labor could obtain an injunction against a quarry owner requiring the owner to permit warrantless searches of the quarry to ensure compliance with the Federal Mine Safety and Health Act of 1977. *Id.* at 596-97, 606.

The Court noted that the Fourth Amendment's prohibition against unreasonable searches applies to administrative inspections of private commercial property. However, while administrative searches of private homes must ordinarily be conducted pursuant to a warrant, *Camara v. Municipal Court,* 387 U.S. 523 (1967), warrantless administrative searches of commercial property do not necessarily violate the Fourth Amendment. *Donovan v. Dewey,* 452 U.S. at 598. This greater latitude "reflects the fact that the expectation of privacy that the owner of commercial property enjoys in such property differs significantly from the sanctity accorded an individual's home.... " *Id.* at 598-99. The Fourth Amendment protects the owner of commercial property from unreasonable intrusions by agents of the

government. Inspections of commercial property may be unreasonable if they are not authorized by law, are unnecessary for the furtherance of government interests, or are so random, infrequent, or unpredictable that the owner, for all practical purposes, has no real expectation that his property will be inspected from time to time by government officials. *Id.* at 599. Where the legislature has made no rules governing the procedures that inspectors must follow, a warrant may be necessary to protect the owner from the unbridled discretion of executive and administrative officers. *Id.*

The assurance of regularity provided by a warrant may not be required when the legislature has reasonably determined that warrantless searches are necessary to further a regulatory scheme and the regulatory presence is "sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes." *Id.* at 600. Thus, in *Donovan,* periodic warrantless inspections of mines to ensure compliance with mine health and safety standards were upheld; in *United States v. Biswell,* 406 U.S. 311 (1972), unannounced, warrantless inspections of the premises of firearms and ammunition dealers to examine required records and stock were upheld; and in *Colonnade Catering Corp. v. United States,* 397 U.S. 72 (1970), the congressional scheme for warrantless inspection of the records and inventory of a liquor dealer was sustained against a Fourth Amendment challenge. Where those standards are not met, warrantless administrative searches cannot be constitutionally sustained. *Marshall v. Barlow's Inc.,* 436 U.S. 307 (1978) (warrantless search of any employment facility for safety hazards, under Occupational Safety and Health Act of 1970,

unconstitutional); *See v. City of Seattle,* 387 U.S. 541 (1967) (warrantless search of commercial warehouse under fire code to ascertain fire hazards unconstitutional), *cf. Michigan v. Clifford,* ____ U.S. ____ , 104 S. Ct. 641 (1984) (search of burned home to determine cause of blaze after firefighting efforts have ben completed required a warrant); *Michigan v. Tyler,* 436 U.S. 499 (1978) (search of burned furniture store to ascertain cause of fire after firefighters have completed their work requires a warrant).

It is not asserted by the challengers that the searches at issue here are unauthorized by law or unnecessary for the furtherance of governmental interests. The legislature has determined that illicit traffic in stolen valuable articles is encouraged by the absence of any required record-keeping system by the purchasers of those articles. §18-16-101, 8 C.R.S. (1984 Supp.) (legislative declaration). The defendant officials presented a great deal of evidence in *Exotic Coins, Inc.* relating regulation of the purchasing of valuable articles to recovery of stolen valuable articles and the identification of those who took them. The contested issue is whether th regulatory presence is sufficiently comprehensive and defined to bring searches under the Act within those "certain carefully defined classes of cases," *Camara v. Municipal Court,* 387 U.S. at 528, where the *Colonnade - Biswell - Donovan* exception allows warrantless searches. We hold that it is.

The Act requires a purchaser of valuable articles to identify the seller, obtain a declaration of ownership, keep a register of transactions, hold most types of valuable articles for thirty days, and report transactions and submit declarations of ownership on a weekly basis. §18-16-103, -105 to -107, 8 C.R.S. (1984 Supp.). A purchaser of valuable articles is necessarily aware that the register of transactions will be

subject to periodic inspections because it is the Act that requires the buyer to maintain the register in the first place and to make weekly reports on the information it contains. The scope of this search is limited to the register itself, the purposes of the search are apparent from the required contents of the register and from the weekly reporting requirement, and the search can be made only *at a* "reasonable" time. When viewed as an adjunct to the weekly reporting requirement, inspection of the register is unlikely to be so random, infrequent or unpredictable that a legitimate expectation of privacy in its contents will arise. *See Donovan v. Dewey,* 452 U.S. at 598-99.

With regard to inspection of valuable articles during the holding period, the purchaser is again necessarily aware that these articles will be subject to periodic inspection, because the holding period would serve little, if any, purpose if these articles could not be readily inspected. The scope of the search is limited to the items held. If these items were not held separate, then—at least in the case of dealers—the valuable articles would be merchandise offered for sale, and the purchaser's expectation of privacy in such merchandise ordinarily would be minimal. *See Katz v. United States,* 389 U.S. 347, 361 (1967) (Harlan, J., concurring) (Even objects in a person's home might not be protected by the Fourth Amendment if they are exposed to the plain view of outsiders with no intention to keep them private.).

The Act's challengers argue that the *Colonnade - Biswell - Donovan* exception to the warrant requirement is inapplicable for several reasons. First they claim that warrantless administrative searches are reasonable only in industries with a "long tradition of close government supervision," *Marshall v. Barlow's Inc.,* 436 U.S. at 313. This

position was rejected in *Donovan v. Dewey*, 452 U.S. at 606, where it was held that the pervasiveness and regularity of regulation, not its duration, determines whether a warrantless inspection program is reasonable under the Fourth Amendment.

Another asserted objection is that these searches are made without probable cause. Although this concern was raised in *Camara v. Municipal Court*, 387 U.S. at 534-39, that case involved the search of a private residence. The appellants in *Camara* argued that the Fourth Amendment requirement that "no warrants shall issue, but upon probable cause," was applicable to administrative housing inspections. The Court in *Donovan*, however, noted that the warrant requirement of the Fourth Amendment is not necessarily applicable to administrative searches of commercial property. *Donovan v. Dewey*, 452 U.S. at 598. The Court thus had no occasion to address the issue of probable cause. Nor is it necessary for this court to consider the issue, since we find that the Act authorizes a warrantless administrative search that is valid under the *Donovan* standard.

Finally, the coin dealers suggest that the *Colonnade - Biswell - Donovan* exception does not apply where the purpose of the search is to obtain evidence of crime rather than to further administrative or regulatory objectives. It is true that the legislative intent was "to aid law enforcement officials in the discovery and identification of sellers of stolen valuable articles and in the identification and recovery of stolen valuable articles...." §18-16-101. The method of accomplishment of this objective, howver, *is* the implementation of an administrative and regulatory scheme of record keeping and inspection. The searches conducted under the Act are not directed toward gathering evidence concerning a

single particular crime. *Compare* this case *with Michigan v. Clifford*, ____ U.S. ____ , 104 S. Ct. 641 (1984) (search of burned home to determine cause of fire or to obtain evidence of arson). Rather, the administrative searches permit systematic gathering of information that, together with other data gleaned by law enforcement officers through their regular activities in investigating thefts, will enable thieves to be identified and stolen property to be recovered. It is also noteworthy that there is nothing in the Act to suggest that purchasers of valuable articles are targeted as a group suspected of criminal activity. The possibility that searches under the Act could lead to discovery of criminal activity by a purchaser seems no more direct than that the administrative searches authorized by *Colonnade, Biswell* and *Donovan* might yield evidence of violation of criminal laws by the liquor dealers, firearms and ammunitions merchants, or mine owners involved in those cases. Given the totality of these circumstances, we reject the contention that the searches authorized by the Act are constitutionally flawed because of their purpose.

The challengers to the Act refer to the search and seizure clause of the Colorado Constitution, Article II, section 7, without suggesting that a different standard of reasonableness should be applied. We see no reason to reach a different result here under the Colorado Constitution than that reached under the United States Constitution.

We conclude that the register and valuable article search provisions of the Act do not constitute constitutionally unreasonable searches.

## IV.

The plaintiffs in *Exotic Coins* vigorously argue that several provisions of the Act are unconstitutionally vague. Two closely-related due process principles provide the grounds for such an attack. A statute is void for vagueness if it does not give fair warning of the conduct prohibited or if its standards are so ill-defined as to create a danger of arbitrary and capricious enforcement. *Papachristou v. City of Jacksonville,* 405 U.S. 156 (1972); *LDS, Inc. v. Healy,* 197 Colo. 19, 589 P.2d 490 (1979). In analyzing a penal statute for vagueness, we use a well-established test: if the statute fairly describes the conduct forbidden, and men of common intelligence can readily understand its meaning and application, it will be upheld. *Connally v. General Construction Co.,* 269 U.S. 385 (1926); *People v. Blue,* 190 Colo. 95, 544 P.2d 385 (1975); *People v. Gonzales,* 188 Colo. 272, 534 P.2d 626 (1975).

### A.

The coin dealers argue that the terms "valuable article," "purchaser," "private collector," "collectors' items," "stamped and assayed gold and silver bullion," and "law enforcement officer" are inadequately defined. Statutory terms need not be defined with mathematical precision in order to be valid. Rather, statutory language must strike a balance between two conflicting concerns; it must be specific enough to give fair warning, yet sufficiently general to address the problem under varied circumstances and during changing times. *Colorado Auto & Truck Wreckers Association v. Department of Revenue,* 618 P.2d 646, 651 (Colo. 1980). Moreover, if the legislative intent is clear, imprecision

of terms does not necessarily result in constitutional deficiency. *See LDS, Inc. v. Healy*, 197 Colo. 19, 589 P.2d 490 (1979). "[A] statute need not be drafted with the greatest possible facility or lucidity of expression if it meets the minimal requirements of due process." *People v. Blue*, 190 Colo. at 100, 544 P.2d at 389.

Analyzing the Act in this light leads to the conclusion that the term "valuable article" is not impermissibly vague. The general legislative purpose in adopting the Act could not be more clearly expressed. Section 18-16-101, 8 C.R.S. (1984 Supp.), states:

> The general assembly hereby finds and determines that illicit traffic in stolen valuable articles is encouraged by the absence of any required record-keeping system by persons purchasing such valuable articles.... [i]t is the intent of the general assembly, by enacting this article, to aid law enforcement officials in the discovery and identification of sellers of stolen valuable articles and in the identification and recovery of stolen valuable articles by providing a mandatory record-keeping and reporting system....

The Act also contains a definitional section in which "valuable article" is defined as:

> any tangible personal property consisting, in whole or in part, of *precious* or *semiprecious* metals or stones, whether solid, plated, or overlaid, including, but not limited to, household goods, jewelry, United States commemorative medals or tokens, and gold and silver bullion.

§18-16-102(7)(a), 8 C.R.S. (1984 Supp.).[3]

The challengers object particularly to the phrase "including, but not limited to," appearing in section 18-16-102(7)(a). They fear that this wording allows law enforcement officials to make ad hoc determinations as to what is "valuable," and that it is therefore impossible to determine in advance what will fall within that category. A careful reading of this section, however, reveals that, in order to be considered a valuable article, an item must be composed in whole or in part of *precious or semiprecious* metals or stones. Thus, "valuable" is not a term left to subjective interpretation. Any tangible personal property made of precious or semiprecious metals or stones is a valuable article for the purposes of the Act. That a close reading is required in order to understand the statute does not render it invalid, *People v. Blue,* 190 Colo. at 101, 544 P.2d at 389, nor is it fatal that the definition mentions some, but not all, of the items made of such materials, *cf. id.*

The coin dealers have also objected to the Act's definitions of precious or semiprecious metals or stones. Section 18-16-102(3) defines these terms as follows:

> 'Precious or semiprecious metals or stones' means such metals as, but not limited to, gold, silver, platinum, and pewter and such stones as, but not limited to, alexandrite, diamonds, emeralds, garnets, opals, rubies, sapphires, and topaz. For the purposes of this article, ivory, coral, pearls, jade, and such other minerals, stones, or gems as are customarily regarded as precious or semiprecious are deemed to be precious or semiprecius stones.

Here again, the Act has listed examples without limiting the definition to those examples alone. This is not, as appellants suggest, a vague definition. Rather, it is one that remains flexible to meet the needs of changing times. *See Colorado Auto & Truck Wreckers Association v. Department*

of Revenue, 618 P.2d at 651. What is considered precious may depend on fluctuations in a worldwide market; the Act is drafted to accommodate any changes that occur.

Furthermore, although "precious" and "semiprecious" are terms of common usage, even Webster's Dictionary gives less than an exact definition.

> *Precious stone.* Diamonds, rubies, sapphires, and emeralds are always ranked as precious stones; sometimes others, as alexandrites and cat's-eyes, are included. The pearl, although not a stone, is ranked as a precious gem because of its beauty and rarity.

*Merriam Webster's New International Dictionary* (2d ed. 1959). Surely statutory terms can be only as precise as the language in which they are written. That the coin dealers can contemplate additional examples does not render the definition constitutionally invalid on its face.

The coin dealers' argument that "purchaser" is a vague term is tied to their contention that "valuable article" is unconstitutionally vague. The Act states that a purchaser is:

> any person holding himself out to the public as being engaged in the business of buying valuable articles or any person who purchases five or more valuable articles during any thirty-day period. 'Purchaser' does not include a person purchasing valuable articles from an estate or from a retail or wholesale merchant.

§18-16-102(5), 8 C.R.S. (1984 Supp.).

Since we have concluded that the term "valuable article" is not vague, use of that term in the definition of "purchaser" does not render that latter definition invalid. The challengers argue, however, that the definition is vague

because it is unclear how recently five purchases must have been made to make a buyer a "purchaser." They also challenge the fact that no definition is given for the terms "estate" or "retail or wholesale merchant."

The clear purpose of defining "purchaser" as the Act does is to restrict the Act's application to exclude casual collectors of valuable articles. *See* §18-16-109, 8 C.R.S. (1984 Supp.). Only commercial dealers and other frequent buyers are meant to be subject to the reporting requirements. In order to achieve this objective, the Act excludes from the definition of "purchaser" someone who makes only a few purchases a month, and someone who buys valuable articles from an estate. Moreover, the legislature concluded that the purposes of the Act would not be advanced by extending its coverage to a person purchasing valuable articles from a retail or wholesale merchant. As in all definitions in the Act, not every word is separately defined, but this court has never held that such specificity is necessary. *People v. Blue,* 190 Colo. 95, 544 P.2d 385 (1975). When considered as a whole, the definition of "purchaser"—including its utilization of the readily comprehensible terms "estate" and "retail or wholesale merchant"—when read together with section 18-16-109, makes clear the scope of the Act's applicability, providees guidance for law-abiding behavior, and does not create a danger of arbitrary enforcement. *See People v. Beruman,* 638 P.2d 789 (Colo. 1982).

The challengers contend that the inclusion of all persons purchasing five valuable articles in one month within the definition of "purchaser" makes that definition vague because it may be applied to persons who made such purchases many years ago. This objection is also untenable. Statutes are presumed to operate prospectively, §2-4-202, 1B C.R.S. (1980), and there is nothing in the Act to suggest

that it is meant to encompass acts that took place before the statute was drafted. In view of this it is clear that only a person who has made five or more purchases of valuable articles in a thirty-day period since the enactment of the Purchasers of Valuable Articles Act may be considered a "purchaser" for the purposes of enforcing the Act.

The Act includes "gold and silver bullion" within the definition of "valuable article," §18-16-102(7), and exempts "stamped and assayed gold and silver bullion" from the thirty-day holding requirement, §18-16-106. The challengers argue that "bullion" is vague, based on conflicting testimony elicited by them from several witnesses. Nevertheless, the fact that the witnesses did not know the definition of the word "bullion" does not compel the conclusion that it has no sufficiently definite meaning. Webster's Dictionary defines bullion as:

> Gold or silver, considered merely as so much metal without regard to any value imparted by its form ... specif., uncoined gold or silver, in the shape of bars, ingots, or the like.

*Merriam Webster's New International Dictionary* (2d ed. 1959). Nor is the expanded term "assayed... bullion" insufficiently definite. To assay is to examine to determine the metal's weight, measure, quality or other properties. *Id.*

The coin dealers argue that, because jewelry might be considered bullion, it is impossible to know whether it is subject to the Act's holding period. Under the terms of section 18-16-106, however, there is little reason for such confusion to occur. Section 18-16-106 states that, although valuable articles other than gold and silver bullion shall be subject to the holding period, bullion shall not. Jewelry is included within the Act's definition of valuable articles; therefore, jewelry is subject to the holding period, while

gold and silver valuable for metallic content only would not be. The fact that situations can be envisioned in which difficulty in application of these definitions can be expected does not render the definitions impermissibly vague. *People v. Blue,* 190 Colo. at 101, 544 P.2d at 389.

**D.**

We turn next to a portion of the Act that excludes from the Act's application valuable articles "purchased exclusively in interstate commerce and paid for by check mailed to the seller in another state," provided that certain limited records of the transaction are maintained. §18-16-109, 8 C.R.S. (1984 Supp.). This exclusion, the challengers to the Act contend, is unconstitutionally vague because it might be construed to cover items obtained by a purchaser that were at some earlier time imported from another state. This is a strained construction that defies the clear language of the provision. The legislative intent was to create a narrow exemption for qualified, isolated transactions involving interstate commerce. We conclude that the exemption applies only when the purchaser mails a check to a seller in another state and that the coin dealers' interpretation is untenable.

A similar argument is made by the challengers with respect to the exemption for "businesses engaged in selling valuable articles exclusively as collectors' items, and who pay for such purchases by check." §18-16-109, 8 C.R.S. (1984 Supp.). Once again the coin dealers argue for a construction that strains the plain meaning of the provision. Within the challenged section, a collector's item is considered an article valued for its artistic or historical worth, rather than for the market price of its metallic or stone content. We find no

merit in the coin dealers' argument that this is confusing, or in their contention that anyone selling any valuable articles as collectors' items should fit within the exemption even though they also sell valuable articles for their metallic value. Such a construction would have the effect of rendering the word "exclusively," in the above-quoted section, meaningless. Such a construction defies common sense, as well as common English usage.

**E.**

The coin dealers' final vagueness challenge concerns the terms "law enforcement agency" and "peace officer," which are defined by the Act as follows:

> 'Local law enforcement agency' means any marshal's office, police department, or sheriff's office with jurisdiction in the locality in which the purchaser makes the purchase.

§18-16-102(1), 8 C.R.S. (1984 Supp.).

> 'Peace officer' means any undersheriff, deputy sheriff other than one appointed with authority only to receive and serve summons and civil process, police officer, state patrol officer, town marshal, or investigator for a district attorney or the attorney general who is engaged in full-time employment by the state, a city, city and county, town, judicial district, or county within this state.

§18-16-102(2), 8 C.R.S. (1984 Supp.).

Unlike other terms defined by the Act, there is no language here suggesting that these definitions are not limited to the officials described. In light of this, the challengers' contention that it is unclear which officers are included in these definitions is without merit.

## V.

We next address the coin dealers' challenge to the penalty provision of the Act, §18-16-108, 8 C.R.S. (1984 Supp.), which states:

> Any person who violates any of the provisions of this article commits a class 5 felony. Any person who knowingly gives false information with respect to the information required by sections 18-16-103 and 18-16-105 commits a class 5 felony.

The challengers contend that the first sentence of this section creates a strict liability offense for failure to keep records as required. Relying on *Lambert v. California*, 355 U.S. 225, *reh. denied*, 355 U.S. 937 (1958), they argue that a statute that makes a felony of a wholly passive failure to act is unconstitutional. *Lambert* held that an ordinance making it unlawful for persons convicted of felonies to remain in Los Angeles for more than five days without registering violated due process of law in the absence of a requirement that the violator had actual knowledge of the duty to register, or that proof be made of the probability of such knowledge. 355 U.S. at 229.

We believe that *Lambert* is distinguishable from the case at hand. In *Lambert*, the Court noted that the statute at issue was unlike the usual exercise of police power creating an offense based on a failure to perform a required act. Mere presence in the city was sufficient to trigger operation of the act, and there was nothing to alert persons subject to the registration requirement that action was required. In finding the ordinance in *Lambert* unconstitutional, the Court did not completely abrogate the states' rights to "declare an offense and to exclude elements of knowledge and diligence from its definition." 355 at 228. Nevertheless, the United States Supreme Court has sug-

gested that strict liability offenses traditionally have not been favored in Anglo-American criminal jurisprudence, and at least where a crime has its origin in the common law, a culpable mental state requirement will be presumed to have been intended by Congress even in the absence of explicit statutory language. *United States v. United States Gypsum Co.*, 438 U.S. 422, 436-38 (1978); *Morissette v. United States*, 342 U.S. 246 (1952). We have interpreted our own criminal statutes in like manner. *People v. Mascarenas*, 666 P.2d 101, 107 (Colo. 1983).

The legislative purpose of the Purchasers of Valuable Articles Act is to reduce the frequency of burglaries and allow stolen goods to be returned to the rightful owners by requiring purchasers of valuable articles to keep records and hold goods for a certain period before resale. This court has held before, under similar circumstances, that it will not be presumed that the legislature intended to attach serious criminal penalties to an act or omission requiring no culpable mental state. *People v. Sequin*, 199 Colo. 381, 609 P.2d 622 (Colo. 1980); *see People v. Washburn*, 197 Colo. 419, 593 P.2d 962 (Colo. 1979); *People v. Johnson*, 193 Colo. 199, 564 P.2d 116 (1977). Legislative silence on the element of intent is not to be construed as an indication that no culpable mental state is required. *People v. Moore*, 674 P.2d 354, 358 (Colo. 1984); *People v. Hart*, 658 P.2d 857, 859 (Colo. 1983);*People v. Bridges*, 620 P.2d 1, 3 (Colo. 1980). And where a statute is susceptible of different constructions, only one of which complies with constitutional requirements, the constitutional construction must be adopted. *People v. Alexander*, 663 P.2d 1024, 1027 (Colo. 1983); *People ex rel. City of Arvada v. Nissen*, 650 P.2d 547, 550 (Colo. 1982); *People v. Smith*, 638 P.2d 1, 3 (Colo. 1981); *People v. Sequin*, 199 Colo. at 386, 609 P.2d at 625.

The second sentence of the provision in question clearly requires a "knowing" violation. Consistent with the foregoing principles, we conclude that this applies to the first sentence as well. Therefore, the premise upon which the challengers base their attack on section 18-16-108—that it creates a strict liability offense—is invalid.

## VI.

The final constitutional challenge to the Act concerns its reporting requirements. The challengers argue that requiring purchasers of valuable articles to keep a register of their transactions, §18-16-105(1), 8 C.R.S. (1984 Supp.), to make the register available for inspection by peace officers, §18-16-105(3), and to make weekly reports to the local law enforcement agency, §18-16-107, constitutes a violation of their Fifth Amendment privileges against self-incrimination.

Analysis of this issue is guided by the United States Supreme Court's decisions in *California v. Byers,* 402 U.S. 424 (1971), *Marchetti v. United States,* 390 U.S. 39 (1968), and *Shapiro v. United States,* 335 U.S. 1 (1948). In *Shapiro,* the Court approved the "required records" doctrine previously adopted by several state supreme courts. According to that doctrine, records kept by requirement of law to provide information concerning transactions subject to legitimate government regulation are maintained for the benefit of the public, and should be open to public inspection.[4] The Court discerned a constitutional difference between public and private papers. No Fifth Amendment right could be asserted in the contents of public papers. Thus, no such right could be asserted in sales records maintained by a merchant pursuant to regulations promulgated under the Emergency Price Control Act.

This doctrine was limited by *Marchetti v. United States,* 390 U.S. 39 (1968). *Marchetti* involved a statutory system for taxing wagers. Persons involved in the illegal activity of wagering were required to register with the Internal Revenue Service, post registration stamps "conspicuously," and pay an occupational tax. The register was made available to law enforcement officers. In evaluating this scheme, the United States Supreme Court found *Shapiro* inapplicable. The result of the *Marchetti* reporting system was direct incrimination of the person making the report. The court found the three elements of the *Shapiro* "required records" doctrine missing in *Marchetti:* the records were not the kind Marchetti would usually have kept, there were no public aspects to Marchetti's records, and whereas the requirements in *Shapiro* were directed at a non-criminal, regulatory area of the law, those in *Marchetti* were directed at a group "inherently suspect of criminal activities." 390 U.S. at 57. *Accord Haynes v. United States,* 390 U.S. 85 (1968); *Grosso v. United States,* 390 U.S. 62 (1968); *Albertson v. SACB,* 382 U.S. 70 (1965).

The appellants argue that the case at hand is similar to *Marchetti.* We disagree. *Marchetti* was not the last word on the incrimination issue. The United States Supreme Court has since held in *California v. Byers,* 402 U.S. 424 (1971), that although many kinds of reporting may raise a possibility of prosecution derived from information in the reports, the mere possibility of incrimination is insufficient to defeat strong policies in favor of disclosure. The court in *Byers* upheld a statutory requirement that motorists who have been involved in accidents must stop at the scene and give their names and addresses. In resolving the self incrimination issue, the Court stated:

> Whenever the Court is confronted with the question of a compelled disclosure that has an

> incriminating potential, the judicial scrutiny is invariably a close one. Tension between the State's demand for disclosures and the protection of the right against self-incrimination is likely to give rise to serious questions. Inevitably these must be resolved in terms of balancing the public need on the one hand, and the individual claim to constitutional protections on the other; neither interest can be treated lightly.
>
> An organized society imposes many burdens on its constituents. It commands the filing of tax returns for income; it requires producers and distributors of consumer goods to file informational reports on the manufacturing process and the content of products, on the wages, hours, and working conditions of employees. Those who borrow money on the public market or issue securities for sale to the public must file various information reports; industries must report periodically the volume and content of pollutants discharged into our waters and atmosphere. Comparable examples are legion. In each of these situations there is some possibility of prosecution—often a very real one—for criminal offenses disclosed by or deriving from the information that the law compels a person to supply. Information revealed by these reports could well be "a link in the chain" of evidence leading to prosecution and conviction. But under our holdings the mere possibility of incrimination is insufficient to defeat the strong policies in favor of a disclosure called for by statutes like the one challenged here.

*California v. Byers*, 402 U.S. at 427-28. (Footnote omited.) *See United States v. Sullivan*, 274 U.S. 259 (1927).[5]

The *Shapiro-Byers* rationale is controlling in this case. Although all the records required by the Act may not be the kind normally kept by a purchaser in the course of business, neither are they highly private or inherently

incriminating. The registration and reporting provisions of the Act require identification of sellers and the valuable articles received from them. There is nothing within the records themselves to incriminate the purchasers who keep them. Providing a prosecutor with a register is not like handing over a confession of wrongdoing; the holding of *Marchetti* is inapposite here. Moreover, the purpose of the Act is not to apprehend purchasers but to trace and retrieve stolen articles and identify those persons who have sold them. The Act is not directed at a group inherently suspect of criminal activities. It must be acknowledged that some purchasers who make the reports might be prosecuted, but that eventuality is dependent on additional evidence, external to the contents of the required records, that the purchaser bought stolen articles with awareness that the seller acquired them illicitly. As in *California v. Byers,* the reports here present only "the mere possibility of incrimination [which] is insufficient to defeat the strong policies in favor of disclosure...." 402 U.S. at 428. We conclude that the Act does not violate the challengers' Fifth Amendment rights.

## VII.

We have considered the other arguments advanced by the coin dealers and conclude that they are without merit.

The order of the Jefferson County District Court in the *Meltzer* case dismissing the criminal charges is reversed and remanded for further proceedings consistent with this opinion. The order of the Adams County District Court in *Exotic Coins, Inc.* denying the coin dealers' request for a permanent injunction is affirmed.

## FOOTNOTES

1. In this opinion we address only these issues and do not discuss Meltzer's contention, raised for the first time in his answer brief on appeal to this court, that the district court's assumption of jurisdiction after the case had been dismissed by the county court was erroneous. Since this court has not been supplied with the county court record or any record of proceedings in the district court concerning this issue, we are unable to address this question.

2. These assurances are sufficient to satisfy the warrant clause of the Fourth Amendment. *Camara v. Municipal Court,* 387 U.S. 523, 534-39 (1967).

3. Section 18-16-102(7)(b), 8 C.R.S. (1984 Supp.), expands the definition of "valuable article" to encompass "foreign currency when purchased for more than its face value or foreign currency exchange value." No vagueness challenge is leveled at this part of the definition of "valuable article."

4. The court assumed "that there are limits which the Government cannot constitutionally exceed in requiring the keeping of records which may be inspected by an administrative agency and may be used in prosecuting statutory violations committed by the record-keeper himself." 335 U.S. at 32. It concluded, however, that "no serious misgiving that those bounds have been overstepped would appear to be evoked when there is a sufficient relation between the activity sought to be regulated and the public concern so that the Government can constitutionally regulate or forbid the basic activity concerned, and can constitutionally require the keeping of particular records subject to inspection...." *Shapiro v. United States,* 335 U.S. at 32.

5. In *United States v. Doe,* ____U.S. ____, 104 S. Ct. 1237 (1984), the United States Supreme Court held that, although the contents of business records voluntarily prepared by a sole proprietor are not privileged, the act of producing those records may be. The Court expressly noted that the records in question were not required by law to be kept or disclosed to a public agency. We find nothing in the holding or the reasoning of *United States v. Doe* to call into question our reliance on *California v. Byers,* which is not cited in the *Doe* opinion.

# APPENDIX

ARTICLE 16
8 C.R.S. (1984 Supp.).

**18-16-101. Legislative declaration.** The general assembly hereby finds and determines that illicit traffic in stolen valuable articles is encouraged by the absence of any required record-keeping system by persons purchasing such valuable articles. The general assembly further finds that law enforcement officials are hindered in the identification and recovery of stolen valuable articles, and that law enforcement officials are hindered in the discovery and identification of persons selling stolen valuable articles due to the absence of such a required record-keeping system. Accordingly, it is the intent of the general assembly, by enacting this article, to aid law enforcement officials in the discovery and identification of sellers of stolen valuable articles and in the identification and recovery of stolen valuable articles by providing a mandatory record-keeping and reporting system by purchasers and by providing a holding period during which time such articles shall not be disposed of or altered in any manner. Local government may adopt ordinances more strict than the provisions of this article.

**18-16-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Local law enforcement agency" means any marshal's office, police department, or sheriff's office with jurisdiction in the locality in which the purchaser makes the purchase.

(2) "Peace officer" means any undersheriff, deputy sheriff other than one appointed with authority only to receive and serve summons and civil process, police officer, state patrol officer, town marshal, or investigator for a district attorney or the attorney general who is engaged in full-time employment by the state, a city, city and county, town, judicial district, or county within this state.

(3) "Precious or semiprecious metals or stones" means such metals as, but not limited to, gold, silver, platinum, and pewter and such stones as, but not limited to, alexandrite, diamonds, emeralds, garnets, opals, rubies, sapphires, and topaz. For the purposes of this article, ivory, coral, pearls, jade, and such other minerals, stones, or gems as are customarily regarded as precious or semiprecious are deemed to be precious or semiprecious stones.

(4) "Purchase" means giving money to acquire any valuable article, taking valuable articles in full or part satisfaction of a debt, taking valuable articles for resale for the purpose of full or part satisfaction of a debt, or taking valuable articles for sale on consignment.

(5) "Purchaser" means any person holding himself out to the public as being engaged in the business of buying valuable articles or any prson who purchases five or more valuable articles during any thirty-day period. "Purchaser" does not include a person purchasing valuable articles from an estate or from a retail or wholesale merchant.

(6) "Seller" means any person offering a valuable article for money to any purchaser, offering a valuable article in full or part satisfaction of a debt, or offering a valuable article for resale for the purpose of full or part satisfaction of a debt.

(7)(a) "Valuable article" means any tangible personal property consisting, in whole or in part, of precious or semiprecious metals or stones, whether solid, plated, or overlaid, including, but not limited to, household goods, jewelry, United States commemorative medals or tokens, and gold and silver bullion.

(b) "Valuable article" shall also include foreign currency when purchased for more than its face value or foreign currency exchange value.

**18-16-103. Purchaser to identify seller.** (1) No purchaser shall purchase any valuable article without first securing adequate identification from the seller. The type and kind of identification shall be limited to the following:

(a) A valid Colorado driver's license;

(b) An identification card issued in accordance with section 42-2-402, C.R.S.;

(c) A valid driver's license, containing a picture, issued by another state;

(d) A military identification card;

(e) A valid passport;

(f) An alien registration card; or

(g) A nonpicture identification document issued by a state or federal government entity if the purchaser also obtains a clear imprint of the seller's right index finger.

**18-16-104. Purchases prohibited.** No purchaser shall purchase any valuable article from any person under the age of eighteen years.

**18-16-105. Purchaser to maintain register and obtain declaration of seller's ownership.** (1) Every purchaser of valuable articles shall keep a register, in a permanent, well-bound book, in which he shall record the following information: The name, address, and date of birth of the seller and his driver's license number or other I.D. number from any other allowed form of identification pursuant to section 18-16-103; the date, time, and place of the purchase; an accurate and detailed account and description of each valuable article being purchased, including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying marks on such artices and a description by weight and design of such articles. The purchaser shall also obtain a written declaration of the seller's ownership which shall state whether the valuable article is totally owned by the seller, how long the seller has owned the article, whether the seller or someone else found the article, and, if the article was found, the details of its finding.

(2) The seller shall sign his name in such register and on the declaration of ownership.

(3) Such register shall be made available to any peace officer for inspection at any reasonable time.

(4) The purchaser shall keep each register for at least three years after the last date of purchase of valuable articles described therein.

**18-16-106. Holding period.** (1) Except as provided in subsection (2) of this section, a purchaser shall hold all valuable articles within the jurisdiction of purchase for a period of thirty days from the date of purchase, during

which time the valuable articles shall be held separate and apart from any other transaction and shall not be changd in form or altered in any way. The purchaser shall permit any requesting law enforcement officer to inspect the valuable articles during the thirty-day period.

(2) Stamped and assayed gold and silver bullion and gold coins shall not be subject to the holding requirement imposed by subsection (1) of this section. In lieu of such requirement, the purchser shall be required to record the identity of any person to whom he transfers any such bullion or coins and the date, time, and place of such transfer.

**18-16-107. Reports required.** (1) Every purchaser of valuable articles shall provide the local law enforcement agency, on a weekly basis, with two records, on a form to be provided by the local law enforcement agency, of all valuable articles purchased during the preceding week and one copy of the seller's declaration of ownership. The form for recording such purchases shall contain the information required to be recorded in the purchaser's register pursuant to section 18-16-105 and shall also include a physical description of the seller and the dollar amount of the purchse. Said form shall be signed, at the time of the purchase, by the seller and by the individual purchaser or his agent who participated in the purchase. The local law enforcement agency shall designate the day of the week on which the records and declarations shall be submitted.

(2) A copy of such record and the seller's declaration of ownership shall also be forwarded to the local law enforcement agency having jurisdiction in the area where the seller resides.

(3) The local law enforcement agency shall forward copies of such records and declarations of sellers' ownership, upon request, to any other law enforcement agency.

**18-16-108. Penalty.** Any person who violates any of the provisions of this article commits a class 5 felony. Any person who knowingly gives false information with respect to the information required by sections 18-16-103 and 19-16-105 commits a class 5 felony.

**18-16-109. Applicability.** The provisions of this article shall not apply to private collectors purchasing collectors' items from other private collectors or businesses engaged in selling valuable articles exclusively as collectors' items, and who pay for such purchases by check, nor shall the provisions of section 18-16-101 to 18-16-108 apply to valuable articles purchased exclusively in interstate commerce and paid for by check mailed to the seller in another state, if a record of the check by which payment was made and the name and address of the seller is maintained for a period of three years, or a retail merchant who, in a retail transaction involving the sale of a valuable article, receives another valuable article as a trade-in and credits the retail purchaser with the value thereof if the retail purchaser provides proof satisfactory to the retailer that the valuable article was originally purchased from that retailer. For the purpose of this section, a "private collector" is an individual, business, or corporation who purchases an item for a price based on the value of the article as a historical item rather than the prevailing market price of the item's metallic or stone composition; who has an interest in preserving the item in its unique or historical form and who does not alter the form of the article; and whose primary purpose is to keep the article in a collection or to sell to another collector.

**18-16-110. Severability.** If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this article which may be given effect without the invalid provision or application, and, to this end, the provisions of this article are declared to be severable.

SUPREME COURT, STATE OF COLORADO
Case NO. 82SA465
Appeal, District Court, Adams County

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ORDER OF COURT

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EXOTIC COINS, INC., a Colorado corporation, d/b/a WESTMINSTER COIN & JEWELRY, LTD.; JEFF ANDERSON, d/b/a WESTMINSTER GOLD AND SILVER EXCHANGE; JOHN BIELASKI, d/b/a GOLD DUST COIN CENTER,

Plaintiffs-Appellants,

vs.

PAUL Q. BEACOM in his official capacity as District Attorney for the County of Adams; BERT JOHNSON in his official capacity as Sheriff for the County of Adams; THE CITY OF FEDERAL HEIGHTS, an Incorporated Municipality; LESTER M. BAUER in his official capacity as Mayor for the City of Federal Heights; DOUG FARRIS in his official capacity as Chief of Police for the City of Federal Heights; THE CITY OF WESTMINSTER, an Incorporated Municipality; VI JUNE in her official capacity as Mayor for the City of Westminster; KENNETH HUCK in his official capacity as Chief of Police for the City of Westminster; J.D. MacFARLANE in his official capacity as Attorney General for the State of Colorado,

Defendants-Appellees.

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Upon consideration of the Petition for Rehearing filed by the Plaintiffs-Appellants in the above cause, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that said Petition for Rehearing shall be, and the same hereby is, Denied.

BY THE COURT, EN BANC, MAY 28, 1985.

cc: Arthur M. Schwartz, Esq.
1650 Market Street
Denver, CO 80202

Steven L. Bernard, Chief Trial Deputy
450 South Fourth Avenue
Brighton, CO 80601

SUPREME COURT, STATE OF COLORADO
Case No. 82SA329
Appeal, District Court, Jefferson County

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ORDER OF COURT

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THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff-Appellant,

vs.

JAY DAVID MELTZER,

Defendant-Appellee.

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Upon consideration of the Petition for Rehearing filed by the Defendant-Appellee in the above cause, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that said Petition for Rehearing shall be, and the same hereby is, Denied.

BY THE COURT, EN BANC, MAY 28, 1985.

cc: Mary A. Malatesta, Dep. D.A.
1620 Jackson
Golden, CO 80401

Irvin Borenstein, Esq.
1650 Market Street
Denver, CO 80202

DISTRICT COURT, JEFFERSON COUNTY, COLORADO

Case No. 82CR0095

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ORDER

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THE PEOPLE OF THE STATE OF COLORADO,

vs.

JAY DAVID MELTZER,

Defendant.

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THIS MATTER is before the Court on the defendant's motion to dismiss the three counts contained in the information on the grounds that the criminal statutes under which the defendant is charged violate both the Constitution of the United States and of the State of Colorado. The defendant is charged in the first count of the information with knowingly having purchased valuable articles,to wit: gold and silver coins without first securing adequate identification from the seller in violation of 18-16-103, C.R.S. 1973, as amended; in the second count of the information, the defendant is charged with knowingly purchasing valuable articles, to-wit: gold and silver coins from a person under the age of eighteen years in violation of 18-16-104, C.R.S. 1973, as amended; and the third count of the information charges the defendant with knowingly failing to make and keep a register and record of the purchase of

valuable articles, to-wit: gold and silver coins in violation of 18-16-105, C.R.S. 1973, as amended. Defendant asserts numerous reasons why this recent criminal legislation enacted by the Colorado Legislature is violative of the United States and Colorado Constitutions. This order will be limited to a discussion of those challenges which form the basis for disposition of the defendant's motion to dismiss.

The Colorado legislation concerning purchasers of valuable articles is strikingly similar to legislation existing in the State of Florida which has been tested on constitutional grounds in the United States District Court for the Middle District of Florida. An action was brought in that Court for declaratory and injunctive relief against the enforcement of the Florida statute which regulated the secondhand precious metal business. Because of the nature of this action, the Florida court considered a general attack on the Florida legislation and wrote an extensive opinion which concluded that the legislation was unconstitutional and enjoined Florida officials from enforcing its provisions. *Mid-Fla Coin Exchange, Inc. v. Gr[illegible]n,* 529 F. Sup. 1006 (M.D. Fla., Dec. 1981). Although this federal court decision is not controlling in this case, the Court finds many of its conclusions to be persuasive in deciding the defendant's motion to dismiss.

The Colorado Legislature in enacting the criminal sanctions concerning purchasers of valuable articles was understandably concerned with the sale of stolen gold, silver, gems and other merchandise to dealers in gold, silver and other precious metals. This is obviously a legitimate concern based on the increase in burglaries in which items of this nature have been stolen and readily disposed of through gold and silver exchanges which offer cash with no

questions asked. However, even legitimate concern cannot support legislation which infringes upon or is violative of constitutional rights.

The district attorney concedes that "the coinage, issuance, valuation and regulation of money and gold bullion are exclusively federal functions" and enactment of any legislation affecting these functions "would unquestionably be beyond the power of state authority and in clear violation of the supremacy clause" of the United States Constitution. However, the district attorney would make a distinction between money and gold bullion as legal tender and money and gold bullion as valuable articles as defined by the Colorado statute. The Court is unable to make this distinction based on the number of cases decided by the federal courts concerning the exclusive province of the Congress of the United States to regulate all matters concerning money and gold bullion. The regulation of gold is a power that has been exercised exclusively by either Congress or the President, or both. Congressional power of regulation of gold has been held to be virtually absolute extending to every facet of gold acquisition, ownership and transfer. *Norman v. Baltimore and Ohio Railroad Company,* 294 U.S. 240, 55 S.Ct. 407(1935). *Laycock v. Kenney,* 70 F. 2d 580 (9th Cir. 1959), Cert. denied 361 U.S. 933, 80S.Ct. 373 (1960).

Recently, the Congress has eliminated restrictions on the private ownership and trading of gold by the citizens of this country. As a result, any private individual or corporation may now hold gold, trade or sell it on the open market. Since the regulation of gold, its possession and transfer has been preempted by the Congress of the United States, any attempted regulation by an individual state must fail. Inasmuch as the first two counts of the information charge the defendant with the purchase of gold and silver coins,18-16-103 and 104, C.R.S. 1973, as amended, they are unconstitutional as applied to him.

The third count of the information charges the defendant with failing to make and keep a register and record of the purchase of valuable articles, to-wit: gold and silver coins, in violation of 18-16-105, C.R.S. 1973, as amended. In addition to the Court's opinion that this charge must also fall because of its attempt to regulate gold and silver coins, it is constitutionally defective for another reason. Paragraph 3 of that statute provides that such register shall be made available to any peace officer for inspection at any reasonable time. This mandate allows a peace officer to examine and search the private records of an individual or business without first obtaining a search warrant. Although there are instances in which the courts have exempted regulatory agencies from first obtaining search warrants before submission of books and records to it for examination, this statute does not appear to fit that exemption. The thrust of the statute is in the nature of a criminal search rather than an administrative or regulatory search. In accordance with the reasoning set forth in *Camara v. Municipal Court,* 387 U.S. 523 (1967), and *Mid-Fla v. Griffin, supra,* the Court concludes that paragraph 3 of 18-16-105, C.R.S. 1973, as amended, violates the fourth and fourteenth amendments of the United States Constitution and Article II, Section 7 of the Colorado Constitution.

It is therefore the Order and Judgment of the Court that the defendant's motion to dismiss is granted.

DONE at Golden, Colorado, this 1st day of July, 1982.

BY THE COURT:

_____

Michael C. Villano, District Judge

A true copy of the foregoing was mailed to Arthur M. Schwartz, Esq., and Deputy District Attorney Mary A. Malatesta, Esq. on July 1, 1982.

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Deputy Clerk

DISTRICT COURT, ADAMS COUNTY, STATE OF COLORADO

Case No. 81CV1836

ORDER DENYING PRELIMINARY INJUNCTION

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EXOTIC COINS, INC., a Colorado Corporation, d/b/a WESTMINSTER COIN & JEWELRY, LTD.; JEFF ANDERSON d/b/a WESTMINSTER GOLD AND SILVER EXCHANGE; and JOHN BIELASKI d/b/a GOLD DUST COIN CENTER,

Plaintiffs,

vs.

PAUL Q. BEACOM in his official capacity as District Attorney for the County of Adams; BERT JOHNSON in his official capacity as Sheriff for the County of Adams; THE CITY OF FEDERAL HEIGHTS, an Incorporated Municipality; LESTER M. BAUER in his official capacity as Mayor for the City of Federal Heights; DOUG FARRIS in his official capacity as Chief of Police for the City of Federal Heights; THE CITY OF WESTMINSTER, an Incorporated Municipality; VI JUNE in her official capacity as Mayor for the City of Westminster: KENNETH HUCK in his official capacity as Chief of Police for the City of Westminster; and J.D. MacFARLANE, in his official capacity as Attorney General for the State of Colorado,

Defendants.

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CAUSE COMES ON THIS 4th day of November, 1981, for the Court to rule on Plaintiffs Motion for Preliminary Injunction pursuant to Rule 65, Colorado Rules of Civil Procedure, by which the Plaintiff seeks to enjoin the named Defendants from enforcing Senate Bill 389 which was enacted into law on May 22, 1981.

A hearing was held on September 17, 1981, and was continued on October 2, 1981, during which evidence was taken in regard to this case. At this hearing the Court heard the testimony from a total of seven witnesses and admitted three exhibits into evidence. The Court entered a TRO in an effort to preserve the status quo until the Court had an opportunity to rule in this matter. After carefully considering the exhibits and the testimony of the witnesses, and considering fully the arguments of counsel and the citations of authority contained in the briefs submitted, the Court, being fully advised in the premises, NOW ENTERS THE FOLLOWING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER:

## FINDINGS OF FACT

The Plaintiffs represent various established coin dealers located in the cities of Westminster, and Federal Heights, County of Adams, State of Colorado, which are in the business of buying and selling various valuable items having numismatic value including American and foreign coins, other articles of gold and silver, diamonds and other precious stones, and other articles containing precious metals such as jewelry, watches and silverware. The Plaintiffs have operated their businesses for a number of years by buying and selling valuable articles containing gold and silver and other precious metals, which are offered for sale to them by members of the general public. These purchases

and sales are made on the basis of daily market quotations and Plaintiffs contend such transactions are generally contingent upon Plaintiffs' ability to deliver the items within a day or two after the sale. The value of the items traded is determined by the prevailing market price of the metallic content of the items.

The market value of gold, silver and other precious metals fluctuates from day to day and the Court finds that such fluctuations are caused by various market conditions not within the control of Plaintiffs. Plaintiffs contend that due to the volatile nature of the precious metals market, if Plaintiffs were unable to sell the items such as gold and silver immediately upon purchase, they would be unable to continue operations since they are not in the business of speculating in precious metals.

The Defendants represent various law enforcement agencies that are charged with enforcing Senate Bill 389. The Defendants have presented evidence that the incidents of burglaries involving the theft of valuable articles is on the increase in the Denver metropolitan area and that the record keeping and holding period provisions of the Act have aided law enforcement agencies in the recovery of stolen valuable articles.

On May 22, 1981, Senate Bill 389 was enacted amending sections 18-16-101 to 110 of the Colorado Revised Statutes, 1973, entitled "Purchasers of Valuable Articles." According to the legislative declaration of Senate Bill 389, C.R.S., 1973, 18-16-101, as amended, the intent of the Act is "to aid law enforcement officials in the discovery and identification of the sellers of stolen valuable articles and in the identification and recovery of stolen valuable articles by providing a mandatory record-keeping and reporting sys-

tem by purchasers and by providing a holding period during which time such articles shall not be disposed of or altered in any manner."

In order to accomplish its stated purpose, Senate Bill 389 requires that most transactions involving "valuable articles" are subject to certain regulations and a 30 day holding period before resale. Specifically Senate Bill 389 provides that purchase of any valuable article from any person under the age of eighteen years is prohibited, C.R.S. 1973, 18-16-104, as amended; and purchases of valuable articles shall not be made prior to securing adequate identification (as specified in the Act) from the seller, C.R.S., 1973, 18-16-103, as amended. The Act further requires that a bound register is to be kept by any purchaser of valuable articles for a period of three years, wherein each transaction is recorded, C.R.S., 1973, 18-16-105, as amended; that the purchaser must record detailed information regarding the identity of the seller; the date, time and place of the purchase and an accurate description of the valuable article being purchased. The purchaser is also required to obtain a written declaration of the seller's ownership and obtain the seller's signature.

In addition to the records contained in the bound book, additional records are required to be provided to law enforcement agencies in the purchaser's community as well as law enforcement agencies located in the community in which the seller purportedly resides, C.R.S., 1973, 18-16-107 (2) & (3) as amended. The records required to be kept in the Plaintiff's shop are subject to inspection by local law enforcement agencies.

The Act further provides that except as to gold and silver bullion or gold coins, all of the other valuable items subject to the Act are required to be stored by the pur-

chaser, without alteration or resale, for a period of thirty days, C.R.S., 1973, 18-16-106, as amended. Violation of any of the provisions of the Act constitutes a class five felony.

Senate Bill 389 is being challenged by the Plaintiffs as being unconstitutional upon a number of grounds. Plaintiffs assert that Senate Bill 389 is unconstitutional on its face because it directly conflicts with statutes passed by the United States Congress; it purports to regulate an area which has been preempted by the United States Congress; it is unconstitutionally broad and vague in violation of the due process clause of the Fourteenth Amendment; it deprives Plaintiffs of property without due process and it interferes with Plaintiffs' constitutional rights to contract.

Plaintiffs ask that the TRO entered by the Court in this case be enlarged into a preliminary injunction pursuant to Rule 65, Colorado Rules of Civil Procedure, to preserve the status quo until there can be an adjudication on the merits upon trial.

## CONCLUSIONS OF LAW

Rule 65, Colorado Rules of Civil Procedure, establishes the requirements for the entry of a preliminary injunction. First, the Plaintiffs must show immediate irreparable injury, *American Investors Life Insurance* vs. *Green Shield Plan, Inc.* 358 P. 2d 473; and second, the probability that the Plaintiffs will succeed on the merits of the case at trial, *Combined Communications Corp.* vs. *City and County of Denver,* 528 P. 2d 249.

Plaintiffs evidence showed that the provisions of the Act would require them to change their operations and pass the costs of compliance with the Act to their customers. Plaintiff's witnesses testified that they would probably be

forced to change their business practices and in some cases be forced out of business if they were required to speculate in the precious metals market on account of the 30 day holding period required by Section 106 of the Act.

Although Plaintiff's witnesses testified that the costs incurred by compliance with the various provisions of the Act would be passed on to Plaintiff's customers and that this would cause loss of good will and some business, the evidence reflects that Plaintiffs' businesses continue to function and that they continue to show some profit even though complying with the Act. The Court finds that although the Plaintiffs presented evidence that the Acts' reporting and holding provisions inconvenienced them and their customers, they did not establish that irreparable harm would result if the Act continued in effect.

The second requirement for obtaining a preliminary injunction is that a petitioner must show a likelihood of success on the merits. Statutes are presumed to be constitutional until proved unconstitutional beyond a reasonable doubt. A party attacking a statute must establish a factual basis to meet this burden. If a Court can interpret a statute in several ways, one of which is constitutional, then the Court must adopt that construction. *People* vs. *Garcia,* 595 P. 2d 228.

Senate Bill 389 is an exercise of the police power by the State Legislature. In exercising the police power the legislature may regulate business and profits, *Eachus* vs. *People,* 238 P. 2d 885; in an effort to promote the public health, the public morals, or the public safety.

The Act serves several distinct public interests and therefore the Court finds that Senate Bill 389 is a valid exercise by the legislature of the police power. First, the Act's holding period and reporting procedures improve the

likelihood that easily traded stolen items will be returned to their owners. Second, the Act increases the likelihood that police can identify and apprehend thieves and burglars. Third, the reporting requirements of the Act deter people from stealing gold and silver items because they are more difficult to resell.

The Act is not designed to prevent the Plaintiffs from trading in valuable articles. Its purpose is to control the flow of stolen property consisting of precious metals. This is a legitimate exercise of the police power, *People* vs. *Sequin*, 609 P. 2d 622; and the Court so finds.

Plaintiffs seek to challenge the validity of Senate Bill 389 on a number of constitutional grounds that are raised in their brief. The Court finds that the Plaintiffs have failed in their burden of showing the likelihood of success on the merits as to any of these constitutional arguments.

The Court, in denying Plaintiffs' Motion for Preliminary Injunction, would rely upon the arguments and citations of authority contained in the Defendants' brief as if set out in full herein.

In conclusion the Court finds that:

(1) Senate Bill 389 is a valid exercise of the police power by the Colorado State Legislature;

(2) Plaintiffs have not shown that they have been irreparably harmed by the enactment and enforcement of Senate Bill 389; and

(3) Plaintiffs have not established the probability that they can demonstrate that Senate Bill 389 is unconstitutional beyond a reasonable doubt, upon a full trial on the merits.

THE COURT THEREFORE ORDERS:

That Plaintiffs' Motion for Preliminary Injunction is hereby denied; and

That the Temporary Restraining Order entered by this Court on September 17, 1981, is hereby vacated.

SO ORDERED this 4th day of November, 1981.

BY THE COURT:

_____

District Judge

DISTRICT COURT, ADAMS COUNTY, COLORADO

Case No. 81CV1836, Div. C

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ORDER DENYING PLAINTIFFS' REQUEST FOR PERMANENT INJUNCTION

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EXOTIC COINS, INC., a Colorado corporation d/b/a WESTMINSTER COIN & JEWELRY, LTD.; JEFF ANDERSON, d/b/a WESTMINSTER GOLD AND SILVER EXCHANGE; JOHN BIELASKI, d/b/a GOLD DUST COIN CENTER,

Plaintiffs,

v.

PAUL Q. BEACOM in his official capacity as District Attorney for the County of Adams; BERT JOHNSON in his official capacity as Sheriff for the County of Adams,

Defendants.

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Attacking the constitutionality of C.R.S. 1973, §18-16-101, *et seq.* (hereinafter "the Act"), the plaintiffs' sought a Preliminary Injunction against the Act's enforcement pursuant to C.R.C.P. 65. On September 17, 1981, and October 2, 1981, the parties presented evidence to the Court on the issue of whether the Court should grant the Preliminary Injunction. On November 4, 1981, the Court denied that request in a written opinion.

On April 8, 1982, the parties presented evidence on the issue of whether this Court should, pursuant to C.R.C.P. 65, grant a Permanent Injunction against the Act's enforcement. The Court now denies the plaintiffs' request for a Permanent Injunction. In doing so, the Court incorporates by reference for purposes of this Order all the Findings of Fact and Conclusions of Law contained within its Order of November 4, 1981. In reaching this decision to deny the plaintiffs' request for a Permanent Injunction, the Court has considered all the testimony given at all the hearings and has read and evaluated all the briefs and supplemental authorities submitted by both sides in this case.

## FINDINGS OF FACT

The evidence presented at the hearing of April 8, 1982, was cumulative of much of the evidence previously submitted. The plaintiffs did not demonstrate that the Act decreased or interfered with their business, nor did they produce any evidence that the Act itself had forced any precious metal dealership out of business. The evidence showed that the plaintiffs had no difficulty in complying with the Act's reporting requirement or with the Act's thirty day holding period. If the Act imposes any additional expense upon the plaintiffs, that expense, like licensing fees, is a legitimate cost of doing business. The plaintiffs did not present any evidence that the Act unreasonably interfered with inter-state commerce.

The Court cannot accept the plaintiffs' assertions that they purchase jewelry only for its bullion value. Jewelry has an intrinsic, artistic value, which the plaintiffs' witnesses refused to concede.

The defendants showed that the Act has aided in the recovery of stolen, valuable articles and has reduced the

number of thefts of those articles. In many cases, valuable articles would not have been recovered but for the Act's reporting requirements and the thirty day holding period.

## CONCLUSIONS OF LAW

The Act is neither vague nor impossible to construe. Its prohibitions and definitions can be readily understood by men of common intelligence. While the evidence at the hearings indicated that there may be some variance in the Act's enforcement and in the forms used by different law enforcement agencies, these differences are minor and are not enough to undermine the Act's clarity.

The Act is based upon a legitimate and proper exercise of the police power, similar to the regulation of liquor and firearms. The Act's important purpose provides the basis for warrantless police inspections of records and items being held for thirty days by dealers of valuable articles. The police do not require search warrants to make these inspections, as they are an integral part of the Act's regulatory scheme and necessary to achieve its purposes. The Act does not authorize forcible entry and the scope of the warrantless inspection is carefully tailored to the Act's purposes. *See, Colonnade Catering Corporation v. United States,* 397 U.S. 72 (1970); *United States v. Biswell,* 406 U.S. 311 (1972); *Donovan v. Dewey,* 69 L.Ed.2d 262 (U.S. S.Ct. 1981).

The Act's reporting provisions do not violate the Fifth Amendment. Those requirements are not focused upon a small group suspected of criminal activity, but rather upon a collection of businessmen that contains mostly law-abiding citizens. *See, California v. Byers,* 402 U.S. 424 (1971); *People v. McNulty,* 184 Colo. 274, 519 P.2d 1195 (1974).

A merchant who complies with the Act's requirements and does not knowingly violate its provisions will not be prosecuted.

The plaintiffs again raise the issues at the Permanent Injunction hearing of whether the Act was pre-empted by Federal law and whether it places an unconstitutional burden upon interstate commerce. Both these issues were addressed in the Court's Order denying the Preliminary Injunction. The Court reaffirms those Findings here, adding that no evidence has been produced to demonstrate that the plaintiffs are correct on either claim. The Court has read Judge Villano's Opinion in *People v. Meltzer*, No. 82CR0095 (Jefferson County D.Ct. 1982). The Court does not find this opinion to be persuasive and therefore does not agree with the findings in that case.

The defendants demonstrated that many juveniles commit burglaries and steal valuable articles covered by the Act. Therefore, the Act's provisions that prohibit merchants from dealing with juveniles are rationally related to the Act's purposes and are therefore constitutional.

The Court hereby adopts the defendants' legal arguments presented in the defendants' briefs and in the defendants' arguments presented at the Preliminary and Permanent Injunction hearings. These arguments shall serve as the Court's own findings on all issues raised in this case. Based upon those findings, the Court rules that the plaintiffs have failed to demonstrate beyond a reasonable doubt that the Act is unconstitutional. The plaintiffs' request for a Permanent Injunction is denied.

DONE this 27th day of July, 1982.

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SUPREME COURT, STATE OF COLORADO

Case No. 82 SA 329

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JAY DAVID MELTZER,

Appellant,

vs.

STATE OF COLORADO,

Appellee.

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NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

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Notice is hereby given that the above-named Appellant, Jay Meltzer hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Colorado, entered in this action on April 22, 1985, upholding the constitutionality of the Purchasers of Colorado Valuable Articles Act, Sections 18-16-101 to 110, 8 C.R.S. (1984 Supp.).

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

Respectfully submitted,

/s/_____

Arthur M. Schwartz
ARTHUR M. SCHWARTZ, P.C.
1650 Market Street
Denver, Colorado 80202
(303)893-2500

Counsel for Appellant

SUPREME COURT, STATE OF COLORADO

Case No. 82 SA 465

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EXOTIC COINS, INC., a Colorado Corporation, d/b/a WESTMINSTER COIN & JEWELRY, LTD.; JEFF ANDERSON d/b/a WESTMINSTER GOLD AND SILVER EXCHANGE; JOHN BIELASKI, d/b/a GOLD DUST COIN CENTER,

Appellants,

vs.

PAUL Q. BEACOM in his official capacity as District Attorney for the County of Adams; BERT JOHNSON in his official capacity as Sheriff for the County of Adams; THE CITY OF FEDERAL HEIGHTS, an Incorporated Municipality; LESTER M. BAUER in his official capacity as Mayor for the City of Federal Heights; DOUG FARRIS in his official capacity as Chief of Police for the City of Federal Heights; THE CITY OF WESTMINSTER, and Incorporated Municipality; VI JUNE in her official capacity as Mayor for the City of Westminster; J.D. MacFARLANE in his official capacity as Attorney General for the State of Colorado,

Appellees.

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NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

---

Notice is hereby given that the Appellants above-named hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of Colorado, entered in this action on April 22, 1985, upholding the constitutionality of the Purchasers of Colorado Valuable Articles Act, Sections 18-16-101 to 110, 8 C.R.S. (1984) Supp.).

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

Respectfully submitted,

/s/_____

Arthur M. Schwartz
ARTHUR M. SCHWARTZ, P.C.
1650 Market Street
Denver, Colorado 80202
(303)893-2500

Counsel for appellants

# APPENDIX B

Purchaser's of Valuable Articles Act,
8 C.R.S. Sections 18-16-101 - 18-16-110
(1984 Supp.)

**18-16-101. Legislative declaration.** The general assembly hereby finds and determines that illicit traffic in stolen valuable articles is encouraged by the absence of any required record-keeping system by persons purchasing such valuable articles. The general assembly further finds that law enforcement officials are hindered in the identification and recovery of stolen valuable articles, and that law enforcement officials are hindered in the discovery and identification of persons selling stolen valuable articles due to the absence of such a required record-keeping system. Accordingly, it is the intent of the general assembly, by enacting this article, to aid law enforcement officials in the discovery and identification of sellers of stolen valuable articles by providing a mandatory record-keeping and reporting system by purchasers and by providing a holding period during which time such articles shall not be disposed of or altered in any manner. Local governments may adopt ordinances more strict than the provisions of this article.

**18-16-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Local law enforcement agency" means any marshal's office, police department, or sheriff's office with jurisdiction in the locality in which the purchaser makes the purchase.

(2) "Peace officer" means any undersheriff, deputy sheriff other than one appointed with authority only to

receive and serve summons and civil process, police officer, state patrol officer, town marshal, or investigator for a district attorney or the attorney general who is engaged in full-time employment by the state, a city, city and county, town, judicial district, or county within this state.

(3) "Precious or semiprecious metals or stones" means such metals as, but not limited to, gold, silver, platinum, and pewter and such stones as, but not limited to, alexandrite, diamonds, emeralds, garnets, opals, rubies, sapphires, and topaz. For the purposes of this article, ivory, coral, pearls, jade, and such other minerals, stones, or gems as are customarily regarded as precious or semiprecious are deemed to be precious or semiprecious stones.

(4) "Purchase" means giving money to acquire any valuable article, taking valuable articles in full or part satisfaction of a debt, taking valuable articles for resale for the purpose of full or part satisfaction of a debt, or taking valuable articles for sale on consignment.

(5) "Purchaser" means any person holding himself out to the public as being engaged in the business of buying valuable articles or any person who purchases five or more valuable articles during any thirty-day period. "Purchaser" does not include a person purchasing valuable articles from an estate or from a retail or wholesale merchant.

(6) "Seller" means any person offering a valuable article for money to any purchaser, offering a valuable article in full or part satisfaction of a debt, or offering a valuable article for resale for the purpose of full or part satisfaction of a debt.

(7)(a) "Valuable article" means any tangible personal property consisting, in whole or in part, of precious or semiprecious metals or stones, whether solid, plated, or

overlaid, including, but not limited to, household goods, jewelry, United States commemorative medals or tokens, and gold and silver bullion.

(b) "Valuable article" shall also include foreign currency when purchased for more than its face value or foreign currency exchange value.

**18-16-103. Purchaser to identify seller.** (1) No purchaser shall purchase any valuable article without first securing adequate identification from the seller. The type and kind of identification shall be limited to the following:

(a) A valid Colorado driver's license;

(b) An identification card issued in accordance with section 42-2-402, C.R.S.;

(c) A valid driver's license, containing a picture, issued by another state;

(d) A military identification card;

(e) A valid passport;

(f) An alien registration card; or

(g) A nonpicture identification document issued by a state or federal government entity if the purchaser also obtains a clear imprint of the seller's right index finger.

**18-16-104. Purchases prohibited.** No purchaser shall purchase any valuable article from any person under the age of eighteen years.

**18-16-105. Purchaser to maintain register and obtain declaration of seller's ownership.** (1) Every purchaser of valuable articles shall keep a register, in a permanent, well-bound book, in which he shall record the following information: The name, address, and date of birth of the seller and his driver's license number or other I.D.

number from any other allowed form of identification pursuant to section 18-16-103; the date, time, and place of the purchase; an accurate and detailed account and description of each valuable article being purchased, including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying marks on such articles and a description by weight and design of such articles. The purchaser shall also obtain a written declaration of the seller's ownership which shall state whether the valuable article is totally owned by the seller, how long the seller has owned the article, whether the seller or someone else found the article, and, if the article was found, the details of its finding.

(2) The seller shall sign his name in such register and on the declaration of ownership.

(3) Such register shall be made available to any peace officer for inspection at any reasonable time.

(4) The purchaser shall keep each register for at least three years after the last date of purchase of valuable articles described therein.

**18-16-106. Holding period.** (1) Except as provided in subsection (2) of this section, a purchaser shall hold all valuable articles within the jurisdiction of purchase for a period of thirty days from the date of purchase, during which time the valuable articles shall be held separate and apart from any other transaction and shall not be changed in form or altered in any way. The purchaser shall permit any requesting law enforcement officer to inspect the valuable articles during the thirty-day period.

(2) Stamped and assayed gold and silver bullion and gold coins shall not be subject to the holding requirement imposed by subsection (1) of this section. In lieu of such requirement, the purchaser shall be required to record the identity of any person to whom he transfers any such bullion or coins and the date, time, and place of such transfer.

**18-16-107. Reports required.** Every purchaser of valuable articles shall provide the local law enforcement agency, on a weekly basis, with two records, on a form to be provided by the local law enforcement agency, of all valuable articles purchased during the preceding week and one copy of the seller's declaration of ownership. The form for recording such purchases shall contain the information required to be recorded in the purchaser's register pursuant to section 18-16-105 and shall also include a physical description of the seller and the dollar amount of the purchase. Said form shall be signed, at the time of the purchase, by the seller and by the individual purchaser or his agent who participatd in the purchase. The local law enforcement agency shall designate the day of the week on which the records and declarations shall be submitted.

(2) A copy of such record and the seller's declaration of ownership shall also be forwarded to the local law enforcement agency having jursidiction in the area where the seller resides.

(3) The local law enforcement agency shall forward copies of such records and declarations of sellers' ownership, upon request, to any other law enforcement agency.

**18-16-108. Penalty.** Any person who violates any of the provisions of this article commits a class 5 felony. Any

person who knowingly gives false information with respect to the information required by sections 18-16-103 and 19-16-105 commits a class 5 felony.

**18-16-109. Applicability.** The provisions of this article shall not apply to private collectors purchasing collectors' items from other private collectors or businesses engaged in selling valuable articles exclusively as collectors' items, and who pay for such purchases by check, nor shall the provisions of section 18-16-101 to 18-16-108 apply to valuable articles purchased exclusively in interstate commerce and paid for by check mailed to the seller in another state, if a record of the check by which payment was made and the name and address of the seller is maintained for a period of three years, or a retail merchant who, in a retail transaction involving the sale of a valuable article, receives another valuable article as a trade-in and credits the retail purchaser with the value thereof if the retail purchaser provides proof satisfactory to the retailer that the valuable article was originally purchased from that retailer. For the purpose of this section, a "private collector" is an individual, business, or corporation who purchases an item for a price based on the value of the article as a historical item rather than the prevailing market price of the item's metallic or stone composition; who has an interest in preserving the item in its unique or historical form and who does not alter the form of the article; and whose primary purpose is to keep the article in a collection or to sell to another collector.

**18-16-110. Severability.** If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this article which may be given effect without the invalid provision or application, and, to this end, the provisions of this article are declared to be severable.